Rijksoverheid

~~DISCRIMINATIE~~

zet een streep door ~~discriminatie~~

Voor meer informatie, kijk op discriminatie.nl

Rijksoverheid

Plasterk lanceert nieuwe campagne tegen discriminatie

Nieuwsbericht | 02-09-2015 | 16:30

Minister Plasterk van Binnenlandse Zaken en Koninkrijksrelaties heeft de nieuwe anti-discriminatiecampagne van de Rijksoverheid gelanceerd. Dat deed hij samen met de waarnemend voorzitter van het College voor de Rechten van de Mens, Emile Hofhuis.



Het thema van de campagne is ‘Zet een streep door discriminatie’. Een eerste serie tv-spots wijst op artikel 1 van de Grondwet. Daarin staat dat in Nederland discriminatie op welke grond dan ook niet is toegestaan. In een tweede serie spots en in ander campagnemateriaal zetten bekende Nederlanders een streep door het woord discriminatie.

Bekende Nederlanders sporen de rest van Nederland aan om ook zo’n statement te maken. Online kan iedereen zijn eigen poster, banner of afbeelding voor social media maken. Ook bedrijven, organisaties en gemeenten kunnen de campagne ondersteunen en materiaal maken met de naam of logo van hun organisatie. Al het campagne materiaal is hier beschikbaar:http://toolkit.discriminatie.nl/

De vernieuwde website discriminatie.nl wijst mensen die gediscrimineerd worden de snelste weg om melding doen. Daarnaast biedt de site informatie en antwoord op vragen.

De campagne richt zich op verschillende vormen van discriminatie, zoals leeftijd, herkomst, geslacht, handicap/chronische ziekte, seksuele gerichtheid en godsdienst, en op verschillende plekken waar discriminatie

plaatsvindt, zoals bijvoorbeeld de werkvloer, de openbare ruimte en school. Naast de brede campagne voor heel Nederland komen er deelcampagnes voor specifieke vormen van discriminatie.



Poster anti-discriminatiecampagne

De campagne is tot stand gekomen door een samenwerking tussen de ministeries van Binnenlandse Zaken en Koninkrijksrelaties; Sociale Zaken en Werkgelegenheid; Veiligheid en Justitie; Onderwijs, Cultuur en Wetenschap en Volksgezondheid, Welzijn en Sport.

Het College voor de Rechten van de Mens is een onafhankelijke toezichthoudende organisatie op gebied van gelijke behandeling en discriminatie. Het College onderzoekt individuele klachten over discriminatie, houdt zittingen en doet uitspraak.

Wethouder van Onderwijs, Emancipatie,
Sociaal-Cultureel Werk en Migrantenbeleid

11900

mw. A.C. van Kampen

Gemeente Den Haag

Retouradres: Postbus 80 000, 2508 GA Den Haag

De leden van de Commissie voor
het Onderwijs

Uw brief van

02844

Uw kenmerk

Ons kenmerk
ON9201053/4245h

Doorkiesnummer
353 29 47 (Van Ettekoven)

Aantal bijlagen

Datum
21 februari 1992

Onderwerp
ontwerp voor een
non-discriminatiecode

Behoort bij agendapunt 5 van de openbare/~~besloten~~ vergadering Commissie voor het Onderwijs dd. 24-2-'92

Geachte dames en heren,

Naar aanleiding van de ontwerp-non-discriminatiecode voor het onderwijs deel ik u het volgende mee.

Het stuk is helaas door een interne communicatiestoornis al voor de collegebehandeling aan u toegezonden.

Voortvloeiend uit de behandeling van de ontwerp-code in het college van burgemeester en wethouders moet artikel 5 (Feestdagen) als volgt gelezen worden:

> "Leerlingen moeten de mogelijkheid hebben tot viering van algemene feestdagen van de door hen beleden godsdienst. De scholen kunnen hiertoe, binnen de beschikbare marge-uren, vrijaf geven."

Per abuis stond de ontwerp-non-discriminatiecode op de C-lijst van de commissievergadering van 24 februari a.s. en niet op de agenda. Inmiddels heb ik het stuk alsnog op de agenda geplaatst (zie hiervoor de aanvullingsagenda).

Ik vertrouw u hiermee voldoende geïnformeerd te hebben.

Met vriendelijke groet,
de voorzitter,

(Anke van Kampen)

Bezoekadres: Burgemeester De Monchyplein 14, Den Haag
Bereikbaar per openbaar vervoer: met buslijn 13;
vanaf Station HS - met buslijn 5; vanaf Station CS - met buslijn 22

Telefoon 070 - 353 26 51
Fax 070 - 363 82 27

BD 23

Wethouder van Onderwijs, Emancipatie,
Sociaal-Cultureel Werk en Migrantenbeleid

Anke van Kampen

119007

Gemeente Den Haag 02830

Behoort bij agendapunt 3.2 van de openbare/~~besloten~~ vergadering Commissie voor het Onderwijs dd. 24-2-92.

Retouradres: Postbus 80 000, 2508 GA Den Haag

de leden van de Commissie voor Onderwijs

Uw brief van
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Uw kenmerk
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Ons kenmerk
DON9200384
Doorkiesnummer
070-353.29.47 (Van Ettekoven)
Aantal bijlagen
1
Datum
18 februari 1992

Onderwerp

Ontwerp-non-discriminatiecode
voor het onderwijs

Geachte dames en heren,

Hierbij zend ik u, ter bespreking in de commissievergadering van 24 februari a.s., een ontwerp van een "non-discriminatiecode" voor het onderwijs.

Ter toelichting merk ik hierbij het volgende op.

- De code is ontworpen door het HARDT in nauw overleg met instanties als de dienst Onderwijs, de Anne Frankstichting, de ASAAM, de Adviesraad Buitenlanders e.a. Het besluit tot het opstellen van deze code werd in 1988 genomen door de gemeenteraad door middel van opname van dit actiepunt in het actieplan "Migranten in het onderwijs" in het kader van de nota "Minderheden Meer Toekomst". Als onderdeel van een pakket van maatregelen achtte de raad zo'n code maatschappelijk noodzakelijk. Tevens werd door het groeiend openlijk racisme de noodzaak van een non-discriminatiecode steeds dringender gevoeld. Helaas zijn ook in 1992 deze redenen om tot zo'n code te komen nog onverminderd van toepassing.

- De non-discriminatiecode bestaat uit de code zelf en een bijbehorende handleiding geschreven voor de leerkrachten.

- Het heeft nogal wat tijd gevergd om de code daadwerkelijk te realiseren. Dat is alleszins begrijpelijk bij zo'n delicaat onderwerp. Niet alleen vereiste het noodzakelijke vooroverleg met alle betrokkenen bij de totstandkoming van de eerste concepten veel zorgvuldigheid, ook het overleg met de schoolbesturen vroeg heel veel tijd.

.....

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BD 23

- Mede op basis van dit overleg (o.a. ook met het "openbare onderwijsveld") is de voorliggende versie van de code meer "algemeen", meer een code geworden. Aanvankelijk had het stuk een beetje het karakter van min of meer strakke regelgeving. De sancties die erin zaten, zijn er nu uit. Artikel 14 bepaalt dat nadere afspraken gemaakt kunnen worden over te treffen maatregelen bij niet-naleving van de code. In de toelichting wordt vermeld dat het bestuur met richtlijnen kan komen. Naar mijn mening is hiermee recht gedaan aan de reacties uit het veld.

- Het voorliggende concept is met de besturen van het bijzonder onderwijs besproken in de COOBO.
  Daar bleek dat alleen het bestuur van het openbaar onderwijs van plan is de code voor al zijn scholen van toepassing te verklaren. De andere denominaties willen wel beschikken over de code, maar laten het aan de besturen c.q. de scholen over of ze ermee willen werken.

- In overleg met het HARDT wordt momenteel bekeken hoe de code het best kan worden geintroduceerd binnen het openbaar onderwijs. Vooralsnog wordt overwogen de officiele aanbieding te laten plaatsvinden op of rond 21 maart. Ik zal u daarover nog nader informeren.

Graag verneem ik in de commissievergadering van 24 februari a.s. uw reactie op deze ontwerp-non-discriminatiecode.

Met vriendelijke groet,
de voorzitter,

(Anke van Kampen)

NON-DISCRIMINATIECODE

VOOR HET ONDERWIJS

21 MAART 1992

INTERNATIONALE DAG TER BESTRIJDING
VAN RACISME EN DISCRIMINATIE

ALLEN DIE ZICH IN NEDERLAND BEVINDEN, WORDEN IN GELIJKE GEVALLEN GELIJK·BEHANDELD. DISCRIMINATIE WEGENS GODSDIENST, LEVENSOVERTUIGING, POLITIEKE GEZINDHEID, RAS, GESLACHT OF OP WELKE GROND OOK, IS NIET TOEGESTAAN.
(Artikel 1 van de Grondwet van het Koninkrijk der Nederlanden)

Discriminatie omvat:
"IEDER ONDERSCHEID DAT EN IEDERE UITSLUITING, BEPERKING OF VOORKEUR DIE, OP GROND VAN RAS, HUIDKLEUR, GESLACHT, TAAL, GODSDIENST, POLITIEKE OF ANDERE OVERTUIGING, NATIONALE OF MAATSCHAPPELIJKE AFKOMST, ECONOMISCHE OMSTANDIGHEDEN OF GEBOORTE, TEN DOEL OF TEN GEVOLGE HEBBEN DAT DE GELIJKHEID VAN BEHANDELING TEN AANZIEN VAN HET ONDERWIJS TENIET WORDT GEDAAN OF WORDT AANGETAST."
(Overgenomen uit artikel 1 van het Verdrag van de United Nations Educational Scientific and Cultural Organization, UNESCO, inzake de bestrijding van discriminatie in het onderwijs, 1960)

INTERCULTUREEL ONDERWIJS "STAAT IN HET PERSPECTIEF VAN OPHEFFING VAN STRUCTURELE ACHTERSTELLING VAN ALLOCHTONE GROEPEN" en "GAAT ACTIEF IN TEGEN VOOROORDELEN, DISCRIMINATIE EN RACISME."
(Nota Minder Heden Meer Toekomst, Den Haag, 1988)

Dit ontwerp non-discriminatiecode is een hulpmiddel bij het vorm geven van intercultureel onderwijs.

INLEIDING

Achterstelling in het onderwijs op welke grond ook, bedoeld of onbedoeld, is niet toelaatbaar.
Besturen van Haagse scholen willen hieraan uitdrukking geven -naast een aantal andere maatregelen- met het vaststellen van een non-discriminatiecode.
Deze beoogt een verfijning te zijn van artikel 1 van de Grondwet en daardoor meer toepasbaar te zijn in de dagelijkse schoolpraktijk.

Met een non-discriminatiecode wil het Haagse Onderwijs erkennen dat
* Den Haag een multi-etnische, multi-culturele stad is;
* discriminatie in de samenleving voorkomt;

en uitspreken dat
* discriminatie in het onderwijs niet mag voorkomen;
* het zowel in beleid als in het dagelijks handelen de beginselen van het non-discriminatie-artikel in de grondwet ten uitvoer wil brengen.

Deze code is bestemd voor iedereen die bij de school betrokken is en bevat regels ten aanzien van

- leerlingen (I)
- ouders (II)
- schoolteam (III)
- onderwijsdoelstelling (IV)

evenals

- gedragsregels (V)
- klachtenprocedure (VI)
- maatregelen (VII)
- evaluatie (VIII)

Artikel 1
Onder discriminatie wordt in deze code verstaan: elke handeling of praktijk die tot gevolg heeft dat mensen worden achtergesteld op grond van ras, geloof, levensovertuiging, sexe, sexuele voorkeur, culturele achtergrond, sociaal-economisch milieu en fysieke verschijning.

LEERLINGEN/STUDENTEN

Artikel 2 Algemeen
1. De school moet de leerlingen in staat stellen tot het beleven van de eigen culturele orientatie en de eigen godsdienst, en het gebruiken van de eigen taal.
2. Indien een beslissing van de school naar het oordeel van een ouder/verzorger in strijd is met het bepaalde in het vorige lid, kan deze de directeur verzoeken deze beslissing in heroverweging te nemen.
3. De betrokken ouder/verzorger wordt door de directeur in de gelegenheid gesteld zijn verzoek mondeling toe te lichten.
4. Na een zorgvuldige afweging tussen het belang van de leerling en het belang van de school, neemt de directeur een nieuwe beslissing. Bij deze afweging wordt onder het belang van de school mede verstaan algemeen maatschappelijke belangen.
5. De nieuwe beslissing wordt gemotiveerd aan de ouder/verzorger meegedeeld.

Artikel 3 Taal
1. De leerlingen dienen te ervaren dat de eigen talen erkend en gewaardeerd worden. De school ontwikkelt hiertoe een beleid.
2. De leerkrachten spreken met elkaar af hoe zij met meertalige situaties in school omgaan.
3. Wanneer dit voor een goed begrip van de leerstof noodzakelijk is, zal aan een leerling met een niet-nederlandstalige achtergrond, eventueel door tussenkomst van een medeleerling, voor zover mogelijk, in zijn of haar taal, nadere uitleg worden gegeven.
4. De leerling heeft het recht om buiten de lessen de taal van zijn of haar voorkeur te spreken.

Artikel 4 Naam
1. Bij de inschrijving van een leerling wordt aangetekend hoe de naam van de leerling moet worden uitgesproken.
2. Het personeel is gehouden de naam op de juiste wijze uit te spreken.

Artikel 5 Feestdagen
1. Een leerling heeft op godsdienstige of levensbeschouwelijke gronden het recht een door de school georganiseerd feest niet bij te wonen. Voor deze leerling worden door de school andere activiteiten georganiseerd.
2. Desgewenst wordt aan een leerling op algemene feestdagen van de door hem of haar beleden godsdienst verlof verleend. Door de ouders/verzorgers wordt tenminste twee dagen voor de betrokken feestdag daarvan mededeling gedaan aan de directeur.

Artikel 6 Medezeggenschap
De school streeft actief naar evenredige etnische vertegenwoordiging van de kandidaten voor de geleding 'leerlingen/studenten' van de medezeggenschapsraad.

II OUDERS/VERZORGERS

De leerkrachten delen de verantwoordelijkheid voor het welzijn van de leerlingen met de ouders/verzorgers. Zij erkennen dat het betrekken van de ouders/verzorgers bij de school hier een voorwaarde voor is.

Artikel 7 Medezeggenschap
De school streeft actief naar evenredige etnische vertegenwoordiging van de kandidaten voor de oudergeleding van de medezeggenschapsraad.

Artikel 8 Informatie
Alle voor de ouders/verzorgers belangrijke berichten worden -indien mogelijk- voorzien van een geeigende vertaling in de taal van het land van herkomst.

III SCHOOLTEAM

De leerkrachten en het niet-onderwijzend personeel dienen elkaar te respecteren en onderlinge discriminatie te voorkomen.

Artikel 9 Samenstelling
1. De school streeft naar etnische verscheidenheid binnen het docententeam en de leden van het onderwijsondersteunend personeel.
2. De school streeft naar evenredige etnische vertegenwoordiging van de kandidaten voor de geleding 'personeel' van de medezeggenschapsraad.
3. Bij de werving van personeel zal de school zich door dit uitgangspunt laten leiden.

IV ONDERWIJSDOELSTELLING

De school biedt een leerplan dat jonge mensen optimaal voorbereidt op een plaats in het vervolgonderwijs en de multi-etnische, multi-culturele samenleving.

Artikel 10 Schoolwerkplan/leerplan
De school ziet er op toe dat het gebruikte schoolwerkplan/-leerplan:
a. aansluit bij de belevings- en ervaringswereld van leerlingen van diverse afkomst;
b. etnocentrisme vermijdt en een zo objectief mogelijk beeld geeft van diverse meningen, ideeen en wetenschappelijke verworvenheden, ook die van niet-westerse oorsprong;
c. aandacht besteedt aan het bestaan, de oorzaken en de effecten van racisme, vooroordelen en discriminatie.

Artikel 11 Leermiddelen
De school ziet er op toe dat de gebruikte leermiddelen:
a. uitgaan van een multi-etnische samenleving, etnocentrisme vermijden en geen vooroordelen en stereotypen bevatten.
b. begrippen en vaardigheden ontwikkelen die leerlingen in staat stellen kritisch met informatie om te gaan.
c. er didactisch en methodisch rekening mee houden dat veel leerlingen meertalig zijn.

V GEDRAGSREGELS

Artikel 12 Regels
Het is aan een ieder die zich in het gebouw of op het terrein van de school bevindt, niet toegestaan:
a. discriminerende grappen of opmerkingen te maken;
b. materialen te verspreiden die discriminerend zijn of die aanzetten tot discriminatie;
c. propaganda te maken voor organisaties die discriminatie beogen of anderen daartoe aanzetten.

VI KLACHTENPROCEDURE

Artikel 13
1. De school wijst een lid van het team aan als vertrouwenspersoon.
2. Alle klachten inzake toepassing van deze code kunnen bij de vertrouwenspersoon aanhangig worden gemaakt.
3. De vertrouwenspersoon bepaalt na overleg met de klager(-ster) en desgewenst na overleg met vertrouwenspersonen van andere scholen hoe de klacht zal worden afgedaan.
4. Het bestuur en de directie kunnen hiervoor richtlijnen geven.

VII MAATREGELEN

Artikel 14
1. Tussen school en bestuur worden afspraken gemaakt welke maatregelen worden getroffen, indien het bepaalde in deze code niet door het personeel wordt nageleefd.
2. De personeelsvergadering van de school geeft aan welke maatregelen worden getroffen ten aanzien van leerlingen, bij overtreding van het bepaalde in deze code.
3. Bij overtreding van het bepaalde in deze code door een ouder/verzorger of een andere bij de school betrokken derde, worden maatregelen getroffen.

VIII TOT SLOT

Artikel 15
Het personeel van de school spreekt af hoe deze code wordt nageleefd. Dit wordt aan het bestuur meegedeeld.

Artikel 16
Het bestuur maakt met de school afspraken over jaarlijkse evaluatie van de code.

BEGRIPPEN

Racisme:
elke theorie, ideologie, maar ook elke houding, daad of institutionele praktijk waarbij feitelijke of denkbeeldige fysieke en/of etnische verschillen als aangrijpingspunt dienen om (groepen) mensen te beknotten in hun recht op gelijkwaardigheid.

Discriminatie:
elke handeling of praktijk die tot effect heeft dat mensen onterecht worden achtergesteld (zie artikel 1). Dit kan zijn een GELIJKE behandeling in een ONGELIJKE situatie, of een ONGELIJKE behandeling in een GELIJKE situatie.

Discriminatie kan bedoeld of onbedoeld, bewust of onbewust zijn.

Etnische afkomst:
verwijst naar de door een groep gedeelde waarden, normen, gebruiken, naar de historische en emotionele verbondenheid en vaak een gemeenschappelijk perspectief. Hoewel etnische afkomst ook een objectieve kant heeft, bepaalt de persoon zelf tot welke groep hij/zij wil behoren. Dit kan afhankelijk zijn van tijd en plaats.

Colofon

Samenstelling: drs. Polli Bloem-Hagenaars
mr. Ruud van Dam

Den Haag, maart 1992

't Haags Anti-Racisme en Discriminatie Team,
Burgemeester De Monchyplein 2B, 2585 BC Den Haag.

HANDLEIDING BIJ DE NON-DISCRIMINATIECODE

INLEIDING

We zijn het er allemaal over eens dat discriminatie uit den boze is. Toch is het aantal mensen dat last heeft van discriminatie aanmerkelijk groter dan het aantal mensen dat toegeeft dat zij discrimineren. Een vreemd verschijnsel, vooral voor leerkrachten die zich dagelijks inspannen kinderen te leren dat alle mensen gelijkwaardig zijn.
Een non-discriminatiecode voor het onderwijs beoogt dit verschil te verminderen.

Deze code ondersteunt diegenen die verantwoordelijkheid willen dragen bij het voorkomen van discriminatie. Bijna iedereen is daarbij betrokken: als toeschouwer, als mikpunt of als dader, vaak ongewild en onbedoeld. Een code probeert dus bescherming te bieden aan iedereen, stelt normen voor het omgaan met elkaar en laat mensen nadenken over hun gedrag. Op die manier komt de multiculturele school een stukje dichterbij.

Geschiedenis

Al in 1985 leefde bij een aantal onderwijsmensen in Den Haag de wens gedragsregels op te stellen. Deze regels zouden richtlijnen moeten bevatten voor het omgaan met alledaagse vormen van discriminatie. In het eerste werkplan van 't Haags Anti- Racisme en Discriminatie Team, 't HARDT -januari 1986- werd het opstellen van schoolregels opgenomen. Op vrijwillige basis werd aan scholen ondersteuning geboden. Daarbij bepaalde het team wat het onder discriminatie verstond en wat men er tegen wilde doen.

In de nota Minder Heden Meer Toekomst, actieplan migranten in het onderwijs -januari 1988- van de gemeente Den Haag werd als actiepunt 2 het opstellen van een ontwerp anti-discriminatiecode voor scholen opgenomen. Als onderdeel van een pakket aan maatregelen werd een dergelijke code maatschappelijk acceptabel geacht. Tevens werd door het groeiend openlijk racisme de noodzaak voor een code dringender gevoeld. Aan 't HARDT werd de opdracht gegeven een code te ontwerpen en aan schoolbesturen voor te leggen opdat zij deze vervolgens aan hun scholen aanboden.

Aldus is geschied. 't HARDT werd hierbij terzijde gestaan door een aantal personen, afkomstig uit verschillende organisaties: de dienst Onderwijs, het LBR, de ASAAM, de Anne Frankstichting, de Adviesraad Buitenlanders, de CAD, de SCO en de VKO.

Uitgangspunten van de code

De code erkent dat er zowel institutionele als alledaagse vormen van achterstelling bestaan. Onder institutionele discriminatie wordt verstaan het systematisch achterstellen van personen en groepen op grond van irrelevante kenmerken zoals huidkleur, afkomst en sekse. Dit uit zich bijvoorbeeld in de schoolloopbaan van leerlingen, deelname aan vertegenwoordigende organen zoals de medezeggenschapsraad en de samenstelling van het leerkrachtenteam. Alledaagse vormen van discriminatie zijn bijvoorbeeld het uitschelden, negeren en beledigen. Hoofdstukken I tot en met IV gaan in op institutionele vormen van discriminatie, hoofdstukken V en VI op alledaagse.

De code gaat ervan uit dat het goed is een norm te stellen. De discussie over wat wel en niet moet en mag dient voortdurend gevoerd en getoetst te worden aan de realiteit. Deze discussie is een voorwaarde voor een levend gebruik van de code. Schoolteams moeten de artikelen in de code konkreet uitwerken en kenbaar maken aan allen die bij de school zijn betrokken. De normen die gesteld worden zijn afspraken die met elkaar worden vastgesteld. Werken met de code levert ervaringsgegevens op die vergelijkbaar zijn met een jurisprudentie.

Let wel: een code is slechts een van de middelen om discriminatie tegen te gaan en dient ingebed te zijn in een intercultureel schoolbeleid.

TOELICHTING

Inleiding
Deze is op te vatten als een intentieverklaring. De regels gelden voor iedereen die op een of andere manier bij de school is betrokken, dus ook voor bezoekers, leveranciers of schoolbegeleiders.

Hoofdstuk I: Leerlingen/studenten
Artikel 2: Dit artikel is ontleend aan de Conventie van de Rechten van het Kind zoals door de Verenigde Naties is aangenomen. Het wordt in de volgende artikelen nader toegelicht. Dit artikel geeft de school de mogelijkheid met de ouders en leerlingen/studenten het interculturele schoolbeleid nader in te vullen. Met andere woorden, er is ruimte voor overleg. Cultuur is niet statisch, de schoolcultuur evenmin. Op basis van wederzijds respect bespreken school en ouders de invulling van taalbeleid, feestdagen en andere maatregelen. Dit verschaft duidelijkheid over het mogelijke spanningsveld van de identiteit van de school en die van ouders.

Artikel 3: Taal vormt voor ieder mens een wezenlijk onderdeel van zijn of haar leven. Het is de huid van de cultuur. De eigen taal vormt de verbinding die ene mens heeft met haar of zijn groep, familie, volk. In emotioneel, sociaal en cognitief opzicht is de eigen taal een belangrijke schakel in de ontwikkeling van een kind. Het Nederlands en de diverse talen van de leerlingen vinden een plaats in het taalbeleid van de school. Voor ondersteuning bij het formuleren en het uitvoeren van een dergelijk beleid kan de school een beroep doen op de diverse begeleidingsinstellingen zoals het COA, 'tHARDT, het HCO, het APS, CPS en KPC.

Artikel 4: De eigen naam draagt bij aan de ontwikkeling van de identiteit van de leerling. Bijnamen of verbasteringen van buitenlandse namen werken destructief. Namen hebben niet zelden een religieuze, culturele of een familie-achtergrond. De school kan de namen aantekenen in fonetisch schrift bij inschrijving van een leerling.

Artikel 5: Religieuze feestdagen kunnen voor ouders en studenten/leerlingen enerzijds en voor de school anderzijds, een gevoelig onderwerp van bespreking zijn. Maak met ouders en studenten/leerlingen duidelijke afspraken. Stel u op de hoogte van de belangrijkste religieuze feestdagen en hun betekenis. Bekijk of de gangbare feesten in school zodanig kunnen worden aangepast dat meer mensen zich daarin kunnen herkennen. Ook de mogelijke parallellen van diverse feesten in dezelfde tijd kunnen op school herdacht worden. Raadpleeg hiervoor ook de richtlijnen die door het bevoegd gezag worden uitgevaardigd of die in de leerplichtwet staan vermeld voor het aanvragen en toestaan van schoolverzuim.

Artikel 6: De evenredige vertegenwoordiging kan niet worden afgedwongen. Toch is een aantal maatregelen mogelijk als deze niet spontaan tot stand komt. Kijk eens hoe het staat met de vergadercultuur, met het al of niet tappen van racistische of sexistische moppen, met de steun aan leerlingen die voor het eerst deelnemen aan vertegenwoordigende organen.
Dit artikel is niet van toepassing voor basisscholen.

II Ouders/verzorgers

Artikel 7: Hiervoor geldt hetzelfde als voor artikel 6. De strekking van dit artikel kan men uitbreiden tot raden en commissies.

Artikel 8: Bij de multi-etnische school is communicatie uitermate belangrijk. Taal kan daarbij wel eens een handicap zijn. Het gebruik van diverse vertalingen is aan te raden. Communicatie via audiovisuele middelen en beeldtaal is een andere mogelijkheid. Vraag ouders en oudere leerlingen eventueel te helpen.

III Leerkrachtenteam

Artikel 9: Dit artikel beoogt een aantal -voor intercultureel onderwijs- belangrijke zaken:

* het maakt de schoolcultuur intercultureel
* het geeft leerlingen diverse identificatiemogelijkheden
* het stelt leerlingen multi-etnisch samenwerken ten voorbeeld.

IV Onderwijsdoelstelling
Artikel 10: Hoewel niet alle leerlingen even gemotiveerd of begaafd zijn, is het toch betreurenswaardig als groepen leerlingen, gekenmerkt door sexe of afkomst, minder presteren. Mocht dit voorkomen, dan zal de school het leerplan onderzoeken en maatregelen treffen. Ook de gebruikte toetsen en testen kunnen onterecht onderscheid maken tussen leerlingen. Voor ondersteuning bij het vormgeven van intercultureel onderwijs en een taalbeleid kan de school terecht bij instellingen als het COA, 'tHARDT, het HCO en de landelijke onderwijsondersteuningsinstellingen.

Artikel 11: Voor de school staat de gelijkwaardigheid van alle leerlingen voorop. Dat zal tot uitdrukking komen in de gebruikte leermiddelen. Voor ondersteuning bij de aanschaf daarvan kan de school terecht bij de daarvoor ingestelde begeleidingsinstituten.

V Gedragsregels
Artikel 12: Voor de ontplooiing van leerlingen is een veilige sfeer nodig. Discriminerende opmerkingen, van wie dan ook, zijn hierbij uit den boze. De grens tussen grappig en discriminerend is niet altijd even helder. Een schoolteam kan regelmatig met elkaar bespreken welke opmerkingen onder welke omstandigheden ontoelaatbaar zijn. Desgewenst vraagt men hierbij ondersteuning aan.

VI Klachtenprocedure
Normaal gesproken zal de directie de aangewezen instantie zijn. Om de drempel te verlagen zal het raadzaam zijn een vertrouwenspersoon aan te wijzen. Het bestuur komt hiervoor met een procedurevoorstel. Voor basisscholen zal dit er anders uitzien dan voor scholen voor voortgezet onderwijs. Voor jonge leerlingen zal de eigen leerkracht de meest aangewezen persoon zijn. Ook niet-onderwijzend personeel kan hierin een belangrijke rol vervullen.

VII Maatregelen
Het bestuur kan hiervoor met richtlijnen komen. Uiteraard gelden de rechtspositiebesluiten en schoolreglementen. Deze zijn in het uiterste geval van toepassing. Onafhankelijk daarvan, kan de school besluiten hoe met klachten om te gaan. De directie bespreekt met het schoolteam

* hoe de klacht gerapporteerd wordt
* wie de klacht behandelt
* wie zorg draagt voor het mikpunt
* wie de dader aanspreekt
* welke pedagogische maatregelen worden getroffen voor de omstanders (bijvoorbeeld de klas of de ouders)
* welke maatregelen worden getroffen; afhankelijk van het aantal overtredingen en de ernst daarvan kunnen deze varieren van praten tot probleemoplossende sancties.

Wethouder Cultuur, Binnenstad
en Internationaal

Marjolein de Jong

Gemeente Den Haag

De voorzitter van Commissie Bestuur

Uw brief van

Uw kenmerk

Ons kenmerk
BSD/2013.1496 – RIS 268894
Doorkiesnummer
070 - 353 2298
E-mailadres

Aantal bijlagen
2
Datum
10 december 2013

Onderwerp
eindevaluatie en toekomst Den Haag 'Shelter City'

Graag wil ik u op de hoogte stellen van de eindevaluatie van de pilot Shelter City en de toekomst van Den Haag 'Shelter City'.

1. Inleiding
Naar aanleiding van de aanname van het gewijzigd initiatiefvoorstel van de fracties van GroenLinks en D66 inzake Shelter City (RIS 179294) in de raadsvergadering van 15 maart 2012, en de uitvoering van de pilot in 2013, zend ik u de eindevaluatie zoals opgesteld door de Haagse NGO Justitia et Pax, uitvoerder van het pilotproject 'Den Haag Shelter City' en de door hen ingestelde selectiecommissie. Het college heeft met belangstelling kennis genomen van de eindevaluatie.

Den Haag is de eerste 'Shelter City' van Europa. In het pilotproject zijn vier mensenrechtenverdedigers achtereenvolgend in Den Haag opgevangen. Mensenrechtenverdedigers uit de hele wereld konden zich voor "Shelter City Den Haag" aanmelden. Justitia et Pax nodigde, na raadpleging van een adviesgroep, per drie maanden één van hen voor een verblijf in Den Haag uit. De mogelijkheid en de wens tot terugkeer naar het land van herkomst was bij de selectie een voorwaarde. De vier mensenrechtenverdedigers die in Den Haag verbleven, zijn ook allen naar het land van herkomst teruggekeerd.

2. Samenvatting evaluatie project
De vier geselecteerde mensenrechtenverdedigers zijn naar Den Haag gekomen voor bescherming en om op adem te komen. Middels cursussen en bijeenkomsten hebben zij ook veel nieuwe kennis en contacten opgedaan die bij terugkeer nuttig bleken in het dagelijks werk en waarvan ook andere collega's van de mensenrechtenverdedigers nu gebruik maken. Naast het volgen van cursussen en het opbouwen van een netwerk op professioneel of politiek terrein, is er ook aandacht geweest voor het contact met de inwoners van Den Haag. Door Justitia et Pax zijn diverse bijeenkomsten voor scholieren en geïnteresseerden georganiseerd, waarbij kennis kon worden gemaakt met de mensenrechtenverdedigers, hun werk en hun levensverhaal. Ook door de mensenrechtenverdedigers zelf zijn deze bijeenkomsten erg gewaardeerd. Daarnaast hebben de mensenrechtenverdedigers er zelf voor gekozen om hun levensverhaal in lokale en nationale media onder de aandacht te brengen. In de zomerperiode van juni t/m september bleek het moeilijker te zijn om een goed inhoudelijk programma te organiseren.

Inlichtingen bij
Eveline van Rens

Postadres: Postbus 12600, 2500 DJ Den Haag
Bezoekadres: Spui 70, Den Haag
Internetadres: www.denhaag.nl

Telefoon: 070 - 353 2551
Fax: 070 - 353 2210

De gemeenteraad heeft tijdens de bespreking van de college Programma begroting 2013- 2017 van 7 november 2013 (amendement Shelter City Programmabegroting 2014-2017, A.15) een bedrag van €150.000,00 voor een vervolg van het project in Den Haag ter beschikking gesteld, gelijkelijk verdeeld over 2014 (€50.000,00), 2015 (€50.000,00) en 2016 (€50.000,00), mits de eindevaluatie niet significant negatiever uit zou vallen dan de tussenevaluatie. De eindevaluatie is positief. Wel stelt Justitia et Pax dat de kosten van het project per mensenrechtenverdediger hoger uitvallen dan in de pilot begroot. Justitia et Pax verzoekt de gemeente om een hogere bijdrage per mensenrechtenverdediger voor de opvang van drie maanden vraagt. Dit komt door meerkosten voor ondersteuning door een lokale medewerker van Justitia et Pax, die in de pilot niet door de gemeente werden gedragen en door de reservering van extra middelen voor ziektekosten en psychologische hulp. Het door Justitia et Pax voorgestelde bedrag aan de gemeente per mensenrechtenverdediger bedraagt €18.876,00.

Op basis van de evaluatie en de hoger uitgevallen kosten, acht ik het opportuun om voor de door u ter beschikking gestelde middelen van € 50.000 per jaar een programma op te stellen voor de opvang in Den Haag van minimaal drie mensenrechtenverdedigers per jaar. Dat is mogelijk één mensenrechtenverdediger minder dan in het pilotjaar. Hiermee wordt echter opvang in de ‘luwte’ van de zomervakantie voorkomen. Voor het organiseren van een inhoudelijk programma voor drie mensenrechtenverdedigers vraagt Justitia et Pax de gemeente om een bijdrage van €56.628,00 per jaar. Dit betekent dat -met een jaarlijkse bijdrage van €50.000,00 van de gemeente Den Haag- Justitia et Pax voor de resterende € 6.628,00 per jaar -of meer bij de opvang van vier mensenrechtenverdedigers- zelf aanvullende (externe) financiering dient te vinden. Justitia et Pax heeft aangegeven hiermee aan de slag te gaan.

Ik ben in overleg met Justitia et Pax om het project voort te zetten onder de volgende voorwaarden:

- Justitia et Pax staat voor de uitvoering van het project in nauw contact met het ministerie van Buitenlandse Zaken. De NGO stelt een risicoprofiel voor de mensenrechtenverdediger op. In het risicoprofiel wordt zorgvuldig onderbouwd dat de persoon een mensenrechtenverdediger is, tijdelijk verblijf buiten eigen land nodig is, wat de aard van de bedreigingen is, én dat gewaarborgd kan worden dat betrokkene terugkeert naar het eigen land;
- het Ministerie van Buitenlandse Zaken adviseert de IND over de mensenrechtenaspecten van de visumaanvraag. De IND beslist uiteindelijk definitief over afgifte van een visum;
- de gemeente vervult enkel een facilitaire en financiële rol (€50.000,00 in 2014, 2015 en 2016). Hiervoor worden door Justitia et Pax per jaar minimaal drie mensenrechtenverdedigers voor een verblijf van maximaal drie maanden (wettelijke termijn) in Den Haag uitgenodigd;
- iedere mensenrechtenverdediger zoekt tijdens zijn of haar verblijf actief de verbinding met de stad;
- Bij het pilotproject is minimaal één in Den Haag gevestigde NGO én het maatschappelijk middenveld betrokken;
- tijdens het verblijf van de mensenrechtenverdedigers wordt een inhoudelijk programma met publieke optredens en relevante netwerkgelegenheden georganiseerd, zonder daarbij de veiligheid en terugkeermogelijkheden van de mensenrechtenverdediger in gevaar te brengen;
- de subsidie wordt jaarlijks verstrekt;
- na ieder jaar wordt het project kort geëvalueerd.

Ik vertrouw erop u hierbij voldoende te hebben geïnformeerd.

Met vriendelijke groet,
de wethouder Cultuur, Binnenstad
en Internationaal

Marjolein de Jong

☎ Per 10-10-1995:
(0495) 49 32 32

H.G.M.Th. DERKS
NOTARIS
Keizer Ottostraat 4, Budel
Postbus 2005, 6020 AA Budel
Telefoon 04958-93232
Telefax 04958-91931

Postbank	1.10.40.98
Rabobank Budel	10.95.03.848
ABN/AMRO Budel	
Capucijnerplein	48.34.73.332
Marktstraat	52.87.15.631
Rabobank Soerendonk	14.79.01.693
Rabobank Maarheeze	13.07.02.900
ING Bank Weert	68.30.63.065

A A N T E K E N E N

BUDEL, 27 januari 1997,

KOPIE

De gemeente Mierlo

t.a.v. Mevrouw P.H.M. Jacobs-Aarts, burgemeester

Postbus 190

5730 AD Mierlo

Edelachtbare Vrouwe,

Deze brief schrijf ik U op uitdrukkelijk verzoek van de Heer J.P. van den Wittenboer, op wiens uitdrukkelijke verzoek ik U deze brief aangetekend toezend.

De Heer J.P. van den Wittenboer is zonder officiële woon- of verblijfplaats. Hij stond ingeschreven in het Centraal Persoonsregister (dat in Den Haag werd gehouden), totdat dat register werd opgeheven. Zijn paspoort, nummer W000711, is afgegeven in de gemeente Den Haag, maar op de plaats waar de woonplaats ingevuld dient de worden, staan slechts streepjes.

De Heer Van den Wittenboer is de voorzitter (en waarschijnlijk het enige bestuurslid) van de Intermediaire Stichting van de Universele Verklaring van de Rechten van de Mens (in het Engels: de Intermediairy Foundation of the Universal Declaration of Human Rights) . Dit voorzitterschap is een (vermoedelijk) onbezoldigde bezigheid. Deze stichting (K.v.K. Eindhoven, nummer S92925) is een eigen stichting van de Heer Van den Wittenboer en met deze stichting strijdt hij tegen misstanden.
Daarnaast is de Heer Van den Wittenboer de eigenaar van het bedrijfje Audio Rarities (handelsregister K.v.K. Eindhoven, nummer 17090220). Dat bedrijfje probeert bekendheid te geven aan een compact disc getiteld "Hitler's Inferno" om de wereld te waarschuwen. Voor zover mij bekend is dat bedrijfje momenteel niet winstgevend. Audio Rarities hanteert het adres Kastanje 13 te Mierlo, het woonadres van de moeder van de Heer Van den Wittenboer, als firma-adres.

De Heer Van den Wittenboer kwam vandaag op mijn kantoor en hij had een grote envelop bij zich. Die envelop was een aangetekend poststuk van de politie Brabant Zuid-Oost, afdeling Geldrop-Nuenen-Mierlo, had het P.T.T.-registratienummer Gdp (=Geldrop) 689 en betrof een retourzending.
In deze zending zaten onder andere de bijgaande kopie-brieven van de gemeente Den Haag, een van 13 september 1995, een van 28 september 1995 en een van 9 oktober 1995, betreffende sociale rechten en een aanvraag van een bijstandsuitkering.
In een begeleidend briefje verwees de politie de Heer Van den Wittenboer naar een notaris (voor zaken als depot).

De Heer Van den Wittenboer heeft zich vooral geërgerd aan de brief van de gemeente Den Haag aan hem van 28 september 1995, waarin hij wordt verwezen naar het Leger des Heils! De ergernis betrof vooral het feit dat een gemeente in kwesties van mensenrechten niet naar instellingen als het Leger des Heils mag doorverwijzen of afschuiven. Daar zijn die instellingen niet voor.

De Heer J.P. (Joannes Petrus) van den Wittenboer, geboren te Mierlo op 14 mei 1955, is ook bij U bekend.
Aan U als Burgemeester van Mierlo heeft de Heer van den Wittenboer de volgende vragen.
1. Of de handelwijze van de gemeente Den Haag overeenkomstig de Nederlandse wet is.
2. Of **U** achter de standpunten en de handelwijze van de gemeente Den Haag staat.
3. Of dat **U** een andere visie hebt.

Voor de duidelijkheid meld ik U dat de Heer Van den Wittenboer in het verleden al eens via de huisarts dokter Verhelst bij de gemeente Mierlo een uitkering heeft aangevraagd voor zijn moeder.

De Heer Van den Wittenboer ontvangt gaarne van U binnen tien dagen antwoord. Zijn postadres is: Postbus 324, 5660 AH Geldrop.
Wilt U een kopie van Uw antwoord aan mij toezenden?

Voor de goede orde herhaal ik dat ik deze brief aan U en de bijlagen daarbij aan U toezend op uitdrukkelijk verzoek van de Heer J.P. van den Wittenboer.
Ik neem in deze kwestie geen standpunt in en speel daarin ook geen bemiddelende rol.

Hoogachtend,

P.S. Een kopie van deze brief zend ik ter kennisneming naar de Heer J.P. van den Wittenboer.

Gemeente Den Haag

Retouradres: Postbus 80 000, 2508 GA Den Haag

De heer J.P. van den Wittenboer
Voorzitter Intermediary Foundation of the
Universal Declaration of Human Rights
Postbus 324
5660 AH GELDROP

Uw brief van
5 september 1995

Uw kenmerk

Ons kenmerk

Doorkiesnummer
(070) 353 2650

Aantal bijlagen

Datum
13 september 1995

Onderwerp
sociale rechten

Hiermee bevestig ik de ontvangst van uw bovenvermelde, aan de burgemeester gerichte, brief. Aangezien dit onderwerp onder de verantwoordelijkheid van de wethouder van Onderwijs, Sociale zaken, Werkgelegenheidsprojecten en Integratie- en Emancipatiebeleid valt, heb ik, namens de burgemeester, uw brief ter afdoening naar deze wethouder doorgezonden.
Voor inlichtingen kunt u zich wenden tot het secretariaat van de wethouder, telefoon (070) 353 2650.

Bureau gemeentesecretaris,

W.L. Donkers

Postadres: Postbus 80 000, 2508 GA Den Haag
Bezoekadres: Burgemeester De Monchyplein 14, Den Haag

Telefoon 070 - 353 20 00
Fax 070 - 361 48 62

BD 07.02.91

Anke van Kampen

Wethouder van Onderwijs, Sociale Zaken, Werkgelegenheidsprojecten en Integratie- en Emancipatiebeleid

Gemeente Den Haag

Retouradres: Postbus 80 000, 2508 GA Den Haag

De heer J.P. van den Wittenboer
Postbus 324
5660 AH GELDROP

Uw brief van
5 september 1995
Uw kenmerk
95123
Ons kenmerk
SZW95123
Doorkiesnummer
(070) 3537409
Aantal bijlagen
1
Datum
28 september 1995

Onderwerp
beantwoording van brief d.d. 5-9-1995

Geachte heer van den Wittenboer,

Met belangstelling heb ik uw brief d.d. 5 september jl. en de bijgevoegde stukken kunnen lezen.

U vermeldt in uw schrijven in Den Haag ingeschreven te staan. Ik ben zo vrij geweest dat na te gaan. Het hebben van een woon- of verblijfplaats is namelijk van groot belang in het kader van de Algemene Bijstandswet. Deze wet, op grond waarvan in beginsel financiële steun geboden kan worden aan mensen die zelf niet over een minimum inkomen beschikken, geeft aan, dat de gemeente waar iemand zich bevindt bijstand aan die persoon kan verlenen.

Een en ander betekent, dat u feitelijk zou moeten wonen in de gemeente Den Haag en in de haagse Gemeentelijk Basisadministratie opgenomen zou moeten zijn om hier een bijstandsaanvraag te kunnen indienen. Uit onderzoek is mij gebleken, dat u hier niet (meer) woonachtig bent. Dit leidt ertoe, dat u van de gemeente Den Haag geen financiële bijstand kunt krijgen. Ik raad u daarom aan om u zo spoedig mogelijk te wenden tot de gemeente waar u daadwerkelijk woont.

Mocht u echter in Den Haag een zwervend bestaan leiden, dan kunt u zich wellicht het beste wenden tot de Kessler Stichting, de La Reyweg 522 of het Leger des Heils, Nieboerweg 125, alhier. Onder bepaalde voorwaarden is het mogelijk om via deze instanties een beroep op de Algemene Bijstandswet te doen.

Vertrouwend u hiermee voldoende te hebben geïnformeerd, teken ik,

De wethouder van Onderwijs,
Sociale zaken, Werkgelegenheidsprojecten en
Integratie- en Emancipatiebeleid,

ANKE VAN KAMPEN

afdruk aan
- 1x directie SZW
- 1x dhr.J. Jansen BSD/BO/BGS

Bezoekadres: Burgemeester De Monchyplein 14, Den Haag
Bereikbaar per openbaar vervoer: met buslijn 13;
vanaf Station HS - met buslijn 5; vanaf Station CS - met buslijn 22

Telefoon 070 - 353 26 51
Fax 070 - 363 82 27

Gemeente Den Haag

Dienst Sociale Zaken en
Werkgelegenheidsprojecten

Retouradres: Postbus 12630, 2500 DK Den Haag

De heer J.P.van den Witteboer
Intermediary Foundation of the
Universal Declaration of Human Rights
Postbus 324
5660 AH GELDROP

Uw brief van
21 september 1995
Uw kenmerk

Ons kenmerk
WK71/TEAM 3D
Aantal bijlagen

Datum
9 oktober 1995

Onderwerp
Bijstandsbesluit Zelfstandigen

Geachte heer van den Witteboer,

Tot onze spijt moeten wij u mededelen dat uw brief van 7 september jongstleden niet bij de afd.zelfstandigen is aangekomen.
Een kopie van bovengenoemde brief hebben wij bij de door u aangeleverde correspondentie wel aangetroffen.

Uit uw verzoek d.d.21 september blijkt ons dat u een beroep op het bijstandsbesluit zelfstandigen wenst te doen.

Tevens blijkt uit de door u aangeleverde correspondentie dat u voorzitter bent van de stichting Intermediary Foundation of the Universal Declaration og Human Rights.

Het Bijstandsbesluit Zelfstandigen sluit stichtingen echter van de mogelijkheid tot bijstandsverlening uit,waardoor bijstandsverlennig op basis van deze regeling in uw situatie niet tot de mogelijkheden behoort.

Ik hoop u hiermede voldoende te hebben geinformeerd.

Hoogachtend,

R.H.van den Hoogeband
Chef afdeling zelfstandigen

Inlichtingen bij

Wijkkantoor / afdeling
afdeling Zelfstandigen
Oude Haagweg 589ᵉ 2552 GJ Den Haag

Telefoon 070 - 3230050
Fax 070 - 3234992

Den Haag Shelter City

Initiatiefvoorstel GroenLinks en D66

GROENLINKS
ZIN IN DE TOEKOMST

D66 Den Haag

februari 2011

Samenvatting

In verschillende landen ter wereld worden de mensenrechten op grove wijze geschonden. Gelukkig laten mensenrechtenverdedigers ter plekke zich de mond niet snoeren. Zij durven kritisch te zijn naar hun eigen overheid en proberen politieke en burgerlijke rechten te bevorderen en te beschermen. In een aantal gevallen gaat dit ten koste van hun eigen veiligheid: zo worden sommige mensenrechtenverdedigers bedreigd om hun werk op die manier te belemmeren. Deze mensen kunnen enorm geholpen zijn met een korte verblijfsperiode buiten hun eigen land. Daardoor kan de dreigende situatie worden doorbroken, kan een veilige terugkeer worden geregeld en kunnen ze vervolgens doorgaan met hun belangrijke werk.

In Europees verband is het idee ontwikkeld om internationale mensenrechtenverdedigers op te vangen in een aantal Europese steden: de zogenaamde Shelter Cities. GroenLinks en D66 stellen voor om van Den Haag zo'n Shelter City te maken. In 'Den Haag Shelter City' kunnen internationale mensenrechtenverdedigers door middel van een noodvisum op adem komen en na een periode van drie tot zes maanden weer terugkeren naar het land van herkomst. Het op deze manier organiseren van tijdelijke opvang, is een laatste redmiddel wanneer opvang in de regio niet mogelijk blijkt en de veiligheid van de mensenrechtenverdediger in kwestie daar niet te garanderen is. Een belangrijk uitgangspunt daarbij is dat mensenrechtenverdedigers hun werk voort kunnen zetten, ook als dat tijdelijk op afstand is. Den Haag zou haar naam als internationale stad van Vrede en Recht eer aan doen door zich als eerste Europese stad op te werpen als Shelter City.

1. **De rol van Europa en Nederland ten aanzien van mensenrechtenverdedigers**

Hoewel internationaal recht niet verplicht tot de bescherming van mensenrechtenverdedigers wordt daar door middel van internationale en Europese richtsnoeren wel toe opgeroepen.

Nederland heeft zich in de internationale arena tot nog toe altijd hard gemaakt voor bevordering van de internationale rechtsorde en mensenrechten. Als ondertekenaar van VN-verklaring 53/144 is Nederland gecommitteerd aan het bevorderen van de bescherming en de totstandkoming van mensenrechten op nationaal en internationaal niveau en aan de bescherming van mensenrechtenverdedigers.

Voortbouwend op deze VN-verklaringen heeft de Raad van de Europese Unie in 2004 de EU-richtsnoeren over mensenrechtenverdedigers aangenomen, met als doel mensenrechtenverdedigers te ondersteunen in hun werk. In de EU-richtsnoeren wordt opgeroepen mensenrechtenverdedigers te beschermen door hen te "voorzien in snelle maatregelen om mensenrechtenverdedigers die in derde landen in gevaar verkeren, te helpen en te beschermen door wanneer dit wenselijk lijkt een spoedvisum af te geven en hun voorlopige opvang in de EU-lidstaten te bevorderen". Het rapport van de subcommissie mensenrechten van het Europese Parlement over het EU-beleid ten aanzien van mensenrechtenverdedigers "benadrukt de noodzaak deze noodvisa gepaard te laten gaan met tijdelijke bescherming en onderdak in Europa voor mensenrechtenverdedigers" en verzoekt de "Hoge Vertegenwoordiger derhalve … om het Europese Parlement een handboek voor te leggen over het opzetten van een 'Shelter City' evenals een kadervoorstel voor het ondersteunen van samenwerkingsverbanden tussen dergelijke steden". De doelstelling van dit 'Shelter City Initiative' is om op gecoördineerde wijze mensenrechtenverdedigers in nood tijdelijk onderdak te bieden in een netwerk van Europese steden.

De mogelijkheid om mensenrechtenverdedigers tijdelijk op te vangen in 'Den Haag Shelter City' is in overeenstemming met het huidige Nederlandse buitenlandbeleid. In april 2010 stelde Kamerlid Pechtold (D66) voor om de mogelijkheden te onderzoeken voor de vestiging van een Shelter City in Nederland. De minister reageerde daar positief op: "Het ligt echter in de rede dat een volgende stap identificatie van een Nederlandse stad zal zijn die bereid is op te treden als gastheer voor mensenrechtenverdedigers die in Nederland respijt zullen krijgen."

Daaropvolgend werden eind april in de gemeenteraad van Den Haag vragen gesteld door GroenLinks en D66 over de aanmelding van de gemeente Den Haag voor het Shelter City Initiative. In mei 2010 werden deze vragen door het college beantwoord: "Wij delen uw mening, de rol van Den Haag als stad van vrede en recht zou hiermee een verdieping ondergaan. […] Gezien de status van het initiatief - nog te vroeg om hierover een beslissing te nemen."

In december 2010 werd tijdens de begrotingsbehandeling positief gereageerd door Minister Rosenthal op een breed gedragen motie waarin de Minister gevraagd werd aan te sluiten bij het Europese 'Shelter City Initiative' en de bijbehorende procedures voor noodvisa in te voeren. Deze motie werd ingediend door El Fassed (GroenLinks) en ondersteund door Pechtold (D66), Voordewind (CU), Van Bommel (SP), Timmermans (PvdA) en Thieme (PvdD) (zie bijlage 1). De minister beloofde de Kamer binnen korte tijd een brief te sturen waar dieper wordt ingegaan op het regelen van noodvisa voor mensenrechtenverdedigers die middels het Shelter City Initiative naar Nederland komen.

In december 2010 was tevens een groot aantal mensenrechtenverdedigers vanuit alle hoeken van de wereld te gast op een internationale conferentie in Den Haag, georganiseerd door de organisatie Justitia et Pax. Zij deden in hun slotverklaring een oproep aan de gemeente om van Den Haag de eerste Europese 'Shelter City' te maken (zie bijlage 2).

2. Wat is 'Den Haag Shelter City'?

'Den Haag Shelter City' biedt een veilige leef- en werkomgeving voor internationale mensenrechtenverdedigers gedurende drie tot zes maanden. Mensenrechtenverdedigers kunnen met een noodvisum op adem komen in Nederland en daarna weer terugkeren naar het land van herkomst. Het initiatief is een laatste redmiddel als opvang in de regio niet mogelijk blijkt en de veiligheid van de mensenrechtenverdediger in kwestie niet te garanderen is. Een belangrijk uitgangspunt is dat mensenrechtenverdedigers hun werk voort kunnen zetten, ook als dat tijdelijk op afstand is. Den Haag doet hiermee haar naam als internationale stad van Vrede en Recht eer aan. Ook het college erkent dit in de beantwoording van de vragen van GroenLinks en D66: "Wij delen uw mening, de rol van Den Haag als stad van vrede en recht zou hiermee een verdieping ondergaan."

De volgende doelen worden door 'Den Haag Shelter City' nagestreefd:

1. Opvang en bescherming aan mensenrechtenverdedigers
2. Capaciteitsopbouw van mensenrechtenverdedigers
3. Imagoversterking van Nederland als voorvechter van de mensenrechten
4. Imagoversterking van Den Haag als stad van Vrede en Recht
5. Betrokkenheid bij en bewustwording van Hagenaren over de mensenrechten.

Onder opvang van en bescherming aan mensenrechtenverdedigers (doelstelling 1) valt het aanbieden van onderdak, psychosociale hulp en dekking van kosten voor levensonderhoud. Indien noodzakelijk kunnen ook familieleden worden opgevangen.

De periode in Nederland kan ook gebruikt worden om de capaciteiten van mensenrechtenverdedigers te versterken (doelstelling 2). Dit kan bijvoorbeeld door middel van computercursussen, taalcursussen, veiligheidstrainingen, mediatrainingen of inhoudelijke scholing die het werk van de mensenrechtenverdediger ten goede komt. Ook kan gedurende de tijd in Den Haag het internationale netwerk van de mensenrechtenverdediger uitgebreid worden waardoor zij/hij bij terugkeer naar het land van herkomst dit netwerk en de opgedane kennis in kan zetten ter bevordering van de mensenrechten en versterking van de rechtsstaat aldaar.

'Den Haag Shelter City' biedt een uitgelezen mogelijkheid om het imago van Nederland en Den Haag te versterken en te profileren (3 en 4). Niet alleen in Nederland maar vooral ook in Europa en de wereld. Door 'Den Haag Shelter City' zal de bekendheid van de stad internationaal vergroot worden en daardoor aantrekkend werken voor de vestiging van internationale NGO's en instituties. Opgevangen mensenrechtenverdedigers zal gevraagd worden om een actieve bijdrage te leveren aan de bekendheid van dit initiatief.

Het is belangrijk om Hagenaren bewust te maken en betrokken te doen voelen bij Den Haag Internationale Stad van Vrede en Recht (5). Daarom zal het initiatief breed bekend worden gemaakt onder de Haagse bevolking en zal opgevangen mensenrechtenverdedigers gevraagd worden om zich op gezette tijden in te zetten voor mensenrechteneducatie om het belang uit te leggen van de vrijheid van meningsuiting. Dit kan bijvoorbeeld door middel van bijeenkomsten op scholen, in bibliotheken en andere gelegenheden.

3. Financiering, Budget en Uitvoering

'Den Haag Shelter City' kan op verschillende manieren gefinancierd worden. Dit is bijvoorbeeld mogelijk door het aanvragen van fondsen via de EU en internationale fondsen, zowel institutioneel als particulier. Hiertoe kan de coördinerende organisatie en o.a. de gemeente Den Haag een aanvraag indienen. Daarnaast zal het aantrekken van sponsoren ook goede mogelijkheden bieden tot publiek private samenwerking. Bedrijven zouden geïnteresseerd kunnen zijn om zodra 'Den Haag Shelter City' is opgericht, hier een bijdrage aan te leveren. Maar ook structurele financiering vanuit de gemeente is essentieel voor de oprichting en het bestaan van 'Den Haag Shelter City'. Op andere gebieden van internationale solidariteit heeft de gemeente haar betrokkenheid getoond door structurele financiering vrij te maken. GroenLinks en D66 zijn van mening dat het voorliggende voorstel prima past binnen de kaders van het internationale beleid dat de gemeente nastreeft en daarom structurele financiering verdient.

Om inzicht te krijgen in de kosten, is hieronder uiteengezet hoe hoog de financiering ongeveer zou kunnen zijn voor de opvang van een mensenrechtenverdediger in Den Haag gedurende drie maanden. Uiteraard heeft iedere mensenrechtenverdediger andere behoeften en kan zij/hij al gebaat zijn bij een korter verblijf dan drie maanden. Ook zal er financiering vrijgemaakt moeten worden voor de inzet van personeel bij de coördinerende organisatie.

Kosten opvang per persoon bij 3 maanden verblijf (bij benadering)		
Reiskosten per retour ticket		1.500
Reiskosten in Nederland (3 x75)		225
Verblijfkosten (3x1400)		4.200
Verzekering (3x150)		450
Levensonderhoud (3x600)		1.800
Training (3x500)		1.500
Eindrapportage		500
Onverwachte uitgaven		325
Subtotaal per drie maanden	€	*10.500*

De uitvoering van 'Den Haag Shelter City' kan komen te liggen bij een organisatie die hiervoor de capaciteit en kennis heeft. Deze organisatie moet beschikken over nauwe banden met lokale, nationale en internationale organisaties en in contact staan met mensenrechtenverdedigers overal ter wereld.

4. Inpassing in staand beleid van de gemeente Den Haag

In de nota Verleiden en Verbinden 'Toekomst van de internationale stad Den Haag' (rv 47, 2009) wordt als een van de resultaten voor het jaar 2011 genoemd dat Den Haag als actieve internationale stad van Vrede en Recht een scherper profiel in Europa heeft. Het cluster Peace & Justice is daarbij speerpunt. Op het gebied van beleidsactiviteiten wordt gewerkt aan het verbeteren van het internationale verblijfsklimaat voor studenten/wetenschappers door middel van huisvesting, informatievoorziening, faciliteiten voor buitenlandse gasten etc. Ook zal er vanuit de gemeente een lobby plaatsvinden in de richting van de Rijksoverheid om waar nodig beperkende regels te verzachten (accreditatie en aanwijzing, licenties, toelating tot Nederland etc.). Deze doelstellingen zijn uitstekend te verenigen met de inhoud van 'Den Haag Shelter City'.

5. De opvang van succesvol mensenrechtenverdediger: Samuel Kofi Woods

Samuel Kofi Woods is sinds 2009 de Minster van Publieke Werken van Liberia. Woods werd als mensenrechtenverdediger lange tijd bedreigd in Liberia. Als studentenleider en later als mensenrechtenactivist heeft Woods zich altijd, ook tijdens de Liberiaanse Burgeroorlog (1989-1996), duidelijk uitgesproken tegen de leiders die de chaos in zijn land veroorzaakten. Hij is regelmatig gevangengenomen en was lange tijd zijn leven onzeker. Uiteindelijk is Woods door Nederland een noodvisum verstrekt zodat hij Liberia kon verlaten.

Tijdens zijn tijd in Den Haag behaalde Woods in 1999 een Post-Graduate Diploma in International Laws and Organizations for Development aan het Institute of Social Studies (ISS). Vervolgens behaalde hij zijn LLM Public International Law in 2000 aan de Universiteit van Leiden.

Woods heeft zijn tijd in Nederland ervaren als een belangrijke periode in zijn leven omdat hij een internationaal netwerk kon opbouwen en omdat hij zijn kennis van het internationaal recht kon vergroten. Uiteindelijk is hij teruggekeerd naar Liberia waar hij in 2006 benoemd werd tot Minster van Arbeid. Door opvang en scholing van deze mensenrechtenverdediger, heeft Nederland er aan bijgedragen dat er momenteel een minister met democratische waarden in Liberia aan het werk is.

6. Dictum

De raad van de gemeente Den Haag, gezien het initiatiefvoorstel Den Haag Shelter City van de fracties van GroenLinks en D66,

Besluit:

I. Den Haag een Shelter City te maken zoals beschreven in dit voorstel,

II. Daarbij de volgende doelen na te streven:
1. Opvang en bescherming van mensenrechtenverdedigers;
2. Capaciteitsopbouw van mensenrechtenverdedigers;
3. Versterken van het imago van Nederland als voorvechter van mensenrechten;
4. Versterken van het imago van Den Haag als stad van Vrede en Recht;
5. Betrokkenheid bij en bewustwording van Hagenaars over mensenrechten bevorderen.

III. Het college te verzoeken een pilot te faciliteren conform het projectvoorstel Den Haag Shelter City (bijlage 1 bij preadvies, RIS 246113) zodat deze vóór 1 september 2013 is uitgevoerd en over de uitkomsten en resultaten van deze pilot aan de Raad te rapporteren uiterlijk op 1 oktober 2013.

IV. Het college te verzoeken om afhankelijk van de uitkomst van deze evaluatie aan de Raad een voorstel te doen over voortzetting van deze pilot.

V. Het college te verzoeken dekking voor de kosten van deze pilot (€ 50.000,-) voor gelijke delen te vinden in de budgetten voor Burgerschap, Internationale Zaken, Cultuur (regeling participatie) en Onderwijs.

Bijlage 1

Voorgesteld 15 december 2010

De Kamer,

gehoord de beraadslaging,

constaterende, dat de regering de ambitie heeft, een vooraanstaande speler te blijven op het gebied van mensenrechten, en projecten van mensenrechtenverdedigers wereldwijd ondersteunt;

constaterende, dat de mensenrechtenverdedigers die de regering ondersteunt, gevaar kunnen lopen omdat zij worden bedreigd, en om die reden soms belemmerd worden in hun werk;

constaterende, dat mensenrechtenverdedigers in levensgevaar enorm geholpen kunnen zijn met een korte verblijfsperiode buiten hun eigen land, waardoor de dreigende situatie kan worden doorbroken en ze een veilige terugkeer kunnen regelen;

verzoekt de regering aan te sluiten bij het Shelter City Initiative en bijbehorende procedures voor noodvisa in te voeren,

en gaat over tot de orde van de dag.

El Fassed

Pechtold

Voordewind

Van Bommel

Timmermans

Thieme

Bijlage 2

Seminar Human Rights Defenders, The Hague 7-10 December 2010

The Hague message on human rights defenders:
What human rights defenders need to effectively change the world

We, human rights defenders convened in The Hague at the invitation of Justitia et Pax Netherlands;
We recall the fundamental and universal values of the United Nations Universal Declaration for Human Rights that was adopted 62 years ago by all member states;

We reemphasize that human rights are universal, inherent, indivisible, inalienable and non-negotiable;

We reiterate that these fundamental rights always need to be defended in all our societies.

We commit ourselves to the following:

- reaffirm to continue to put human rights always at the forefront of our work and activities as human rights defenders (HRDs);
- promote and strengthen alliances and use all available peaceful instruments;
- always support the work and the needs of those who defend human rights at the grassroots and local level, for example by creating regional safety networks.

Moreover we commit ourselves to:

- disseminate our acquired knowledge on the EU guidelines and the UN protection mechanisms;
- promote and strengthen our networks, through building and further strengthening alliances ;
- initiate, in cooperation with supporting NGOs, early alert systems so as to minimize the risks faced by human rights defenders;
- the use of all peaceful instruments available in the defense of human rights.

We stress the following specific needs of human rights defenders at the grassroots level, on top of existing mechanisms:

- to receive the necessary support at all levels to be able to carry out their work;
- the strengthening of networks of human rights defenders to mutually support and exchange information using safe networks of communication;
- having access to psycho-social support for human rights defenders including opportunities to rest and recover in a safe environment;
- a safe environment for all human rights defenders and their families and colleagues.

We recommend to the City of The Hague:

- to live up to its status as the International City of Justice and Peace and engages in providing temporary shelter to human rights defenders in danger (such as the Shelter City project).

We recommend to the Dutch Government:

- to support these initiatives by creating emergency visa procedures for human rights defenders who are at risk in their home country;
- to continue to put human rights at the heart of domestic and foreign policies.

We recommend to the EU and the EU Member States:

- to provide active support to human rights defenders in all countries where they are represented;
- to ensure sustainable support to human rights organizations at grassroots level, strengthening institutions, giving long term modest support for basic conditions instead of the current practice of focusing on project support;
- to consult with human rights defenders when guidelines, country strategy and indicative programmes with regard to human rights defenders are reviewed and renewed;
- to make small funds available in case human rights defenders need to be relocated quickly.

We recommend to the diplomatic missions of the EU (EEAS) and the EU Member States:

- to make maximum use of their diplomatic networks to protect human rights defenders;
- to translate the EU guidelines on human rights defenders in local languages so they become available to all, and to cooperate with religious institutions and local organizations to disseminate them to the grassroots levels;
- to send observers to courts where human rights defenders stand on trial;
- to monitor impunity for attacks on human rights defenders and act upon it as required by the EU Guidelines on human rights defenders;
- to appoint an EU Human Rights Ambassador.

We recommend to the member states of the United Nations:

- to create a standing invitation for the Special Rapporteur on Human Rights Defenders;
- to create a United Nations Human Rights Defenders Fund for human rights defenders in need of quick relocation.

In closing we reiterate our commitment to work with representatives from the UN; EU; states; NGOs and individuals to improve the work, support and defense of human rights defenders.

Samuel Kofi Woods – Liberia
Justine Masika Bihamba – DR Congo
Manjula Pradeep – India
Smaranda Enache – Romania
Maria Balkandzhieva - Bulgaria
Alexandra Delemenchuk – Georgia
Patrick Kikandi Mulemeri – DR Congo
Moise Kambere – DR Congo
Stella Murungi – Uganda
Sylvestre Bwira – DR Congo
Miralem Tursinovic – Bosnia & Herzegovina
Germaine Girighiri – DR Congo
Agit Mirzoev – Georgia
Chris Franssen – The Netherlands
Bogale Kassaye – The Netherlands
Victor Scheffers – The Netherlands
Jan van der Kolk- The Netherlands

The Hague, December 2010

T.a.v. burgemeesters, wethouders en raadsleden

doorkiesnummer	uw kenmerk	bijlage(n)
(070) 373 8707		-
onderwerp	**ons kenmerk**	**datum**
" Wat houdt u minimaal overeind?" Bestuurdersdebat over Mensenrechten		26 juni 2013

Geachte collega,

Welke rol spelen mensenrechten in uw gemeente? Hoe kan door het beschermen en versterken van mensenrechten de leefbaarheid in uw gemeente verbeteren? Hoe ver reikt de zorgplicht van gemeenten voor kwetsbare groepen? En hoe verhoudt het belang van openbare orde en veiligheid zich tot mensenrechten, zoals het recht op privacy? Graag nodig ik u uit voor een debat met collega-bestuurders, op **11 oktober van 13.00 tot 14.30 op het provinciehuis te Lelystad**.

Ik ben van mening dat – in het bijzonder in tijden van financiële krapte – mensenrechten een meetlat kunnen zijn voor wat je als gemeente minstens overeind moet houden, om te voldoen aan de afspraken die wij wereldwijd hebben gemaakt om vrijheid van mensen te kunnen waarborgen. Ik zie het daarom als een kans om de mensenrechten als uitgangspunt te nemen voor de decentralisaties in het sociaal domein, juist omdat we hier afwegingen moeten gaan maken over welke diensten we als gemeenten kunnen blijven leveren.

We werken daarom op het thema Mensenrechten Lokaal samen met Amnesty International, een samenwerking waar onder andere de brochure *Goed bezig! – De betekenis van mensenrechten voor gemeenten* uit voort is gekomen.

Tijdens de bestuurdersbijeenkomst kijken we naar wat wij nodig hebben om deze meetlat in onze gemeente te kunnen toepassen en op welke thema's wij dat van belang vinden.

Aansluitend vindt van 15.00 tot 17.00 een inspiratiebijeenkomst plaats. Deze bijeenkomst gaat specifiek in op de drie decentralisaties in het sociaal domein. Behalve gemeentebestuurders zijn voor deze bijeenkomst ook gemeenteambtenaren en maatschappelijke organisaties uitgenodigd.

Ik hoop van harte dat u deelneemt aan beide inspirerende debatten. U kunt zich hiervoor aanmelden via http://www.vngi-events.nl/.

Hoogachtend,

Jon Hermans-Vloedbeld
Burgemeester Almelo
Lid Nederlandse delegatie naar het Congres van Lokale en Regionale Overheden, Raad van Europa
Portefeuillehouder mensenrechten in de VNG Commissie Europa en Internationaal

Intermediary Foundation of the Universal Declaration of Human Rights

Aan: Burgemeester en Wethouders van Gemeente Geldrop-Mierlo

Postbus:10101

5660GA,GELDROP

Onderwerp: “mensenrechten”

Mierlo,5 januari 2015

Geacht college van Burgemeester en wethouders,

Hierbij vraag Ik uw aandacht mensenrechten als randvoorwaarden in het beleid.

Duurzame armoedebestrijding:

In het raadsprogramma 2010-2014 “een andere tijd,een andere gemeente” heeft het behoud van het sociale gezicht van gemeente Geldrop-Mierlo een hoge prioriteit gekregen.*(Geldrop-Mierlo raadsvoorstel GM2012-0145).*De gemeente dient er samen met haar inwoners van de gemeente

zo veel mogelijk een volwaardig bestaan kunnen leiden en zoveel mogelijk kunnen deelnemen aan de maatschappij.De invulling van de socialegrondrechten ligt bij de gemeente.De sociale grondrechten dwingen de gemeente zich actief op te stellen.Iedereen die in staat is zelf zijn eigen onderhoud te voorzien dit ook moet doen het motto “werk voor inkomen”.Onderlinge solidariteit in de samenleving is zeer belangrijk.Immers,hoe mensen onderling omgaan met een oog hebben voor diegenen die het minder makkelijk hebben.Echter de graadmeter is de garantstelling door de staat van levensomstandigheden die in overeenstemming zijn met de gemeenschappelijke mensenrechtenstandaarden van de Europese Unie.Ten gevolge van de aard en uitvoering van de sociale bijstandswetten rijzen er verschillende mensenrechtenkwesties.Er is o.a. sprake van extreme negatieve labelling t.o.v. mensen met een uitkering door de werkpleinen in nederland in het algemeen.In de cijfers is te zien dat er meer mensen zelfmoord plegen met een werkloosheidsuitkering, maar bij mensen in de bijstand en arbeidsongeschikten gebeurt dit nog vaker.Mensen die arbeidsongeschikt zijn of van een uitkering moeten rondkomen,plegen vijf tot acht keer vaker zelfmoord dan mensen met een baan,*(bron: spitsnieuws.nl 4 december 2013).*
"Uit het Zwartboek UWV blijkt dat er bij de bejegening, werkwijze, communicatie, bereidheid om mensen te helpen en bij de bereikbaarheid van het UWV wel wat kanttekeningen zijn te plaatsen. En dat is zacht uitgedrukt. De gevolgen zijn enorm. Goedwillende burgers zijn tot op het bot getergd, boos, wanhopig, moordzuchtig of juist suïcidaal door hun ervaringen met het UWV. Het is aan u om het UWV daarop te controleren", zei onderzoeksjournalist Raymond Korse van deze krant bij de aanbieding.Het Zwartboek UWV van de Stentor is dinsdagmiddag 27 mei 2014 aangeboden aan de voorzitter Brigitte van der Burg (VVD) van de Vaste Kamercommissie van Sociale zaken en Werkgelegenheid, *(bron: destentor.nl 27 mei 2014).*

Steeds verdergaande bevoegdheden van de overheid:

Gemeente Geldrop-Mierlo staat niet alleen in Haar voortvarende repressieve aanpak van mensen in de bijstand.Draconische maatregelen,die de grondrechten van de burgers aantasten,zijn in Nederland een populair middel geworden door de staatssecretaris van Sociale Zaken en Werkgelegenheid drs. Jetta Klijnsma en inmiddels door de overheid,(Participatiewet en de nieuwe WWB maatregelen 2015).

Een rechtsstaat is een samenleving met een rechtssysteem dat regelmatige en onpartijdige handhaving van publieke regels kent.De overheid moet bij het uitoefenen van macht het grondbeginsel van vrijheid en gelijkheid voor alle mensen aanvaarden.Daarom worden aan de overheid beperkingen opgelegd, in de vorm van garanties voor de individuele vrijheid van de burgers.In een rechtsstaat bestaan die garanties in de vorm van klassieke grondrechten van de

burgers.We moeten ze koesteren en niet proberen erop te beknibbelen.Bij geheel stopzetten van de uitkering blijft de kwalificatie “Mens” bestaan.Het mens-zijn - behoren tot het menselijk ras- is immers niet opgehouden bestaan met het stopzetten van de uitkering.
Op 24 oktober 2012 is door Vereniging van Nederlandse Gemeenten VNG,een brief verzonden aan alle gemeenten,over de betekenis van mensenrechten voor die gemeenten brochure “Goed Bezig:de betekenis van mensenrechten voor gemeenten”,brief kenmerk: DIR/EUI/U201201665.
Uitgangspunt: zelfstandige plicht van gemeenten gebied van de mensenrechten.

Mensenrechten:

De rijksoverheid treedt op als vertegenwoordiger van de staat der Nederlanden bij het ratificeren van de internationale mensenrechtenverdragen. De hele staat verplicht zich door de ratificatie om het verdrag uit te voeren.Als onderdeel van de staat der Nederlanden hebben gemeenten een zelfstandige verplichting om de mensenrechten uit deze verdragen te respecteren, beschermen en verwezenlijken.Dit betekent dat iedere ambtenaar in Nederland, ongeacht de bestuurslaag waarin hij of zij zich bevindt, die verantwoordelijkheid draagt.

Artikel 93 en 94 van de Grondwet:

De mate waarin en de manier waarop die verplichting precies doorwerkt vloeit voort uit artikelen 93 en 94 van de Grondwet. Artikel 93 van de Grondwet bepaalt dat al het internationale recht automatisch doorwerkt in de Nederlandse rechtsorde, behalve als de verdragen te vaag geformuleerd zijn om praktisch uitvoerbaar te zijn. Daar is geen aparte wetgeving van de rijksoverheid voor nodig. Gemeenten zijn dan ook rechtstreeks gebonden aan die verplichtingen. Artikel 94 van de Grondwet bepaalt dat het internationaal recht boven het nationaal recht gaat.*(slechts die bepalingen die ‘een ieder verbindende bepalingen’ zijn én bekend zijn gemaakt).* Europees recht kan op verschillende manieren doorwerken in de nationale rechtsordes. De manieren van doorwerking zijn: rechtstreekse of directe werking, conforme interpretatie en het beginsel van overheidsaansprakelijkheid.

(directe werking) van Unierecht:

(voorwaarden voor rechtstreekse werking)

Bij de voorwaarden voor rechtstreekse werking moet er worden gekeken naar de **bron** waaruit de bepaling voortvloeit. Hierbij is er een
onderscheid tussen **primair** recht en **secundair** recht.Onder primair recht vallen verdragsbepalingen uit het Unieverdrag (VEU) en het Werkingsverdrag (VWEU). Zij staan bovenaan in de juridische rangorde en vormen de grondslag voor alle bevoegdheden van de

Europese instellingen. Onder secundair vallen de verordeningen, richtlijnen, maatregelen en besluiten. Deze zijn tot stand gekomen op basis van de bevoegdheden die in het primaire recht staan. De belangrijkste secundaire rechtsbronnen zijn de verordeningen en richtlijnen.

Menselijke waardigheid:

De menselijke waardigheid is niet alleen een grondrecht op zich,maar ook de grondslag voor alle grondrechten.Het beginsel van de menselijke waardigheid is vastgelegd in de preambule van de Universele Verklaring van de Rechten van de Mens van 1948:

Overwegende,dat erkening van de inherente waardigheid en de gelijke en onvervreemdbare rechten van alle leden van de mensengemeenschap grondslag is voor de vrijheid,gerechtigheid en vrede in de wereld.In zijn arrest van 9 oktober 2001 in de Zaak C-337/98- Nederland tegen Europees Parlement en Raad,Jurispr.2001,blz I-7079,r.o. 70-77,bevestigt het Hof van Justitie dat een grondrecht op menselijke waardigheid deel uitmaakt van het recht van de Unie.Hieruit vloeit voort dat geen van de in dit Handvest vastgelegde rechten mag worden gebruikt om de waardigheid van anderen te schenden. En dat de menselijke waardigheid tot het wezen van de in dit Handvest vastgelegde rechten behoort.Er kan derhalve geen afbreuk worden gedaan,zelfs niet als een recht wordt beperkt door de Participatiewet WWB.

Recht op leven:

Het recht op leven is vastgelegd in de primaire Verdragen van de EU,dat zijn die Verdragen met directe doorwerking.Het meest logische is,dan dat -de Gemeente van het werkelijk verblijf- van Cliënt, de gemeente is,die is aangewezen hier uitvoering aan te geven:Gemeente Geldrop-Mierlo.De gemeente Geldrop-Mierlo gaat goed om met de dieren die verblijven aan het “Molenplein”Mierlo.Voor het geval dat het College -even- vergeten is wat een mens minimaal nodig heeft om te leven,volgt hier een voorbeeld.

Adequate voeding voor ouderen:

Onderstaand schema geeft een overzicht van hoe een volwaardige voeding er voor een oudere (>70jaar) uit zou kunnen zien om in alle voedingsstoffen per dag te voorzien*,(Ik ben persoonlijk 59 Jaren).*

Adequate voeding voor ouderen

Dagelijks
Brood 4 snee (140g)
Margarine op iedere boterham (5g per snee)
Beleg 2x hartig (1 snee kaas = 20g en 1 plak vleeswaren = 15 g) en 2x zoetbeleg
Fruit 2 stuks of 250 ml vruchtensap
Melkproducten 3 glazen à 150 ml
Aardappelen 2 stuks (100g) of 1 opscheplepel rijst/pasta (50g) *
Groente 2-3 opscheplepels (100-150g)*
Vlees 1 stukje vlees, vis of kip (75g)*, vleesvervanging (100g tempé en tahoe) of 2 eieren of 75g bonen* of 70 g kaas
Jus 1 juslepel (15 ml)*
Toetje 1 schaaltje (125 ml)
Vocht 10 kopjes koffie/thee/water/limonade/frisdrank e.d. (10x 125ml)
Vitamine D supplement van 5 tot 10 mcg

Vocht
Uit literatuuronderzoek blijkt dat gezonde ouderen gemiddeld ongeveer 2100 ml vocht per dag gebruiken. Dit is in principe niet minder dan de vochtinname van jonge volwassenen

Maatregelenverordening WWB Geldrop-Mierlo 2013:

Artikel 6: afzien van het opleggen van een maatregel.
Tweede lid:

Hierin wordt geregeld dat het college kan afzien van het opleggen van een maatregel indien het daarvoor dringende redenen aanwezig acht. Wat dringende redenen zijn, is afhankelijk van de concrete situatie en kan dus niet op voorhand worden vastgelegd.

Honderd procent van de bijstandsnorm:

Bij het stopzetten van de uitkering op het niveau van 100 procent zijn onmiddellijk ook de “klassieke grondrechten” afgesneden.Cliënt zou dan achteraf aangewezen zijn op de grillen van

het lot van het toeval van een besluitvorming over “Klassieke grondrechten” door het College van Burgemeester en Wethouders van Gemeente Geldrop-Mierlo in het afzien van het opleggen van een maatregel artikel 6,tweede lid (maatregelenverordening WWB).Is dan één persoon van het college met het verkeerde been uit bed gestapt,dat er dan achteraf nog “meer of minder” Klassieke grondrechten worden toegewezen.Dan is er dus geen sprake van garantie door de overheid met betrekking tot de Klassieke grondrechten,maar het lot van het toeval.Het een en ander druist in tegen het principe van de rechtsstaat en democratie.Aldus: de Klassieke grondrechten houden zich bezig met de relatie staat en burger.Klassieke grondrechten voorkomen dat de staat te veel macht krijgt en zich te veel met burgers gaat bemoeien.

Toepassing van het EU-recht:

Inbreuken
Europese Commissie

Ieder EU-land is verantwoordelijk voor de uitvoering van de EU-wetgeving in zijn interne rechtsorde (tijdige omzetting, overeenstemming en correcte toepassing). De Europese Verdragen bepalen dat de Europese Commissie over de correcte toepassing van het EU-recht waakt. Als een EU-land het EU-recht niet eerbiedigt, kan de Europese Commissie op grond van artikel 258 van het Verdrag betreffende de werking van de Europese Unie en artikel 106a van het EGA-Verdrag tegen die inbreuk optreden (beroep wegens niet-nakoming) en zonodig een zaak aanhangig maken bij het Hof van Justitie.
"Niet-nakoming" betekent dat een EU-land niet aan zijn verplichtingen uit het EU-recht voldoet. Dat kan door handelingen in tegenspraak ermee of door het nalaten van opgelegde handelingen. Inbreuken van EU-landen kunnen door de centrale overheid maar ook door de bevoegde regionale of lokale overheden zijn gepleegd.
De Europese Commissie leidt in het kader van het beroep wegens niet-nakoming eerst een administratieve procedure in (de "inbreukprocedure" of "precontentieuze procedure"). De precontentieuze fase is bedoeld om het EU-land de kans te geven om de situatie vrijwillig in orde te brengen.
Deze procedure bestaat uit meerdere etappes, eventueel voorafgegaan door een onderzoeksfase bij inbreukprocedures die het gevolg zijn van een klacht.
Bij de ingebrekestelling, de eerste etappe van de precontentieuze fase, vraagt de Europese Commissie een EU-land om binnen een bepaalde termijn zijn opmerkingen mee te delen over een probleem van toepassing van het EU-recht.
Het met redenen omklede advies bepaalt het standpunt van de Europese Commissie over de

inbreuk, alsook het voorwerp van een eventueel beroep wegens niet-nakoming met verzoek hieraan binnen een bepaalde termijn te verhelpen. De Europese Commissie moet in het met redenen omklede advies op een coherente en gedetailleerde manier uiteenzetten waarom zij meent dat het betrokken EU-land een van zijn verplichtingen uit het Verdrag niet is nagekomen.
Door de zaak bij het Hof van Justitie aanhangig te maken begint de contentieuze fase.
Volgens vaste rechtspraak van het Hof van Justitie kan de Europese Commissie vrij beslissen om de inbreukprocedure in te leiden en de zaak bij het Hof aanhangig te maken, zelfs op het moment waarop het beroep wordt ingesteld.

Niet-nakoming:

Onder "niet-nakoming" wordt verstaan, de schending door lidstaten van hun uit het Gemeenschapsrecht voortvloeiende verplichtingen.Die niet-nakoming kan bestaan in ofwel het stellen van een handeling ofwel het nalaten een handeling te stellen**.**Onder "Staat" wordt verstaan, de lidstaat die een inbreuk op het Gemeenschapsrecht pleegt, ongeacht welke instantie (op centraal, regionaal of lokaal niveau) voor de niet-nakoming verantwoordelijk is.

Slotwoord:

Deze brief te lezen in de context van het verzoekschrift artikel 258VWEU inzake schending Uniewaarden door lidstaat Nederland verzonden aan de Europese Commissie,dd 5 januari 2015,door IFUD of Human Rights.

(inleiding en het verzoekschrift).

link:

http://www.archive.org/details/InleidingVerzoekArt258VWEU

http://www.archive.org/details/Art258VWEUNederland_201410

deze brief i.a.a.

Werkplein regio Helmond
Postbus; 232
5700AE,Helmond

Ministerie van Sociale Zaken en Werkgelegenheid
Drs. Jetta Klijnsma (staatssecretaris)
Postbus: 90801
2509LV,Den Haag

IFUD of Human Rights

de voorzitter

J.P. van den Wittenboer

Correspondence:Po.box 324, 5660AH Geldrop The Netherlands

Offices:Kastanje 28, 5731NK Mierlo The Netherlands

C.o.C.reg:41092925 Eindhoven N.L.

E-mail: ifudofhumanrights@yahoo.com

Internet: http://ifudofhumanrights.webs.com

Phone:+31 -(0)6 50 425 552

Vereniging van
Nederlandse Gemeenten

Aan alle gemeenten
T.a.v. de raadsgriffier

doorkiesnummer	uw kenmerk	bijlage(n)
(070) 373 8707		1
betreft	**ons kenmerk**	**datum**
Goed Bezig: de betekenis van mensenrechten voor gemeenten	DIR/EUI/U201201665	24 oktober 2012

Geachte raadsgriffier,

Goed bestuur en mensenrechten gaan hand in hand. Als we kijken naar het Verdrag voor de Rechten van de Mens, zien we tal van aanknopingspunten met het gemeentelijk beleid. Veel gemeentelijke diensten hebben direct te maken met mensenrechten, zoals het veiligheids-, integratie-, armoede- of jongerenbeleid, of in de uitvoering van de wet gemeentelijke antidiscriminatievoorzieningen.

Bovendien is er een belangrijke link tussen burgerparticipatie en mensenrechten: er kan geen sprake zijn van democratie als mensenrechten niet volledig worden begrepen en gerespecteerd. Als gemeenten hun burgerschapsagenda's willen laten slagen, moeten burgers weten wat hun rechten en plichten zijn.

Vanuit de VNG is de Nederlandse delegatie naar het Congres van Lokale en Regionale Overheden van de Raad van Europa betrokken bij deze onderwerpen. De Raad van Europa biedt, als hoeder van de mensenrechten en democratie, bescherming aan de positie en belangen van gemeenten. Dit gebeurt aan de hand van het Europees Handvest inzake Lokale Autonomie, dat richtlijnen geeft aan de manier waarop lokale democratie en decentralisatie vorm gegeven moet worden.

Daarnaast richt de Raad van Europa zich op het creëren van bewustzijn van het belang van mensenrechten. Daarom heeft de VNG besloten om samen met Amnesty International een concrete brochure te maken over hoe gemeenten direct of indirect bezig zijn met mensenrechten. Zij zijn, zoals de titel van de brochure doet vermoeden "Goed Bezig". De brochure vindt u bijgesloten in deze brief.

Mocht u meer willen weten over de activiteiten van de VNG in de Raad van Europa, neemt u dan contact met ons op via renske.steenbergen@vng.nl.

Met vriendelijke groet,
Vereniging van Nederlandse Gemeenten

Annemiek Wissink
Directeur Europese Zaken

Ministerie van Binnenlandse Zaken en
Koninkrijksrelaties

> Retouradres Postbus 20011 2500 EA Den Haag

Aan de Voorzitter van de Tweede Kamer der Staten-
Generaal
Postbus 20018
2500 EA Den Haag

Postbus 20011
2500 EA Den Haag
www.rijksoverheid.nl
www.facebook.com/minbzk
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Kenmerk
2015-0000299578

Uw kenmerk
2015Z06197/2015D15940

Datum 3 juni 2015
Betreft Decentralisatie en scholing i.r.t. het Nationaal Actieplan Mensenrechten

Uw vaste commissie voor Binnenlandse Zaken heeft in haar brief d.d. 21 april 2015 verzocht om ten behoeve van het algemeen overleg over het Nationaal Actieplan Mensenrechten van 24 juni a.s. een schriftelijke toelichting te ontvangen op aspecten van decentralisatie en scholing in relatie tot het Nationaal Actieplan Mensenrechten. [1] Met deze brief geef ik gevolg aan dit verzoek.

Decentralisaties en mensenrechten
Met de drie decentralisaties in het sociaal domein hebben gemeenten een groot aantal nieuwe taken gekregen. Bij deze taken speelt de bescherming van mensenrechten een rol. Bij de nieuwe verantwoordelijkheden op het gebied van jeugdzorg, werk en inkomen en zorg aan langdurig zieken en ouderen, moeten gemeenten bijvoorbeeld rekening houden met kinderrechten, sociaal-economische rechten, maar ook met het recht op privacy in relatie tot het verwerken van gevoelige persoonsgegevens.

Gemeenten zijn evenals de Rijksoverheid gebonden aan mensenrechtenverplichtingen en daarom is het van belang dat gemeenten goed op de hoogte zijn van deze verplichtingen. Dit wordt ook onderkend in het Nationaal Actieplan Mensenrechten. Er is vanuit de Rijksoverheid de afgelopen periode dan ook aandacht besteed aan bewustwording en kennisoverdracht op dit gebied. Via het BZK-programma "Gemeenten van de Toekomst" ontvangen gemeenten ondersteuning bij de drie decentralisaties en kennisverspreiding op het gebied van mensenrechten is hier een onderdeel van. Zo is op de website www.gemeentenvandetoekomst.nl bijvoorbeeld de handreiking over mensenrechten voor lokale en regionale overheden van het EU-Grondrechtenagentschap en het Comité van de Regio's geplaatst en op korte termijn zal ook een handreiking over sociaal-economische rechten volgen. Ook zal de folder "BAAT bij mensenrechten in het sociale domein" van het College voor de Rechten van de Mens binnenkort op deze website beschikbaar zijn, waarin een mensenrechtelijk kader geschetst wordt dat gemeenten handvatten biedt bij het vormgeven van beleid.[2] Daarnaast is er met de VNG-Academie contact over de

[1] *Kamerstukken II* 2013/14, 33 826, nr. 1 en bijlage.
[2] http://www.mensenrechten.nl/publicaties/detail/34852.

mogelijkheid van aanvullende onderwijsmodules.

In het Nationaal Actieplan Mensenrechten is tevens verwezen naar het Netwerk Mensenrechten Lokaal: een samenwerkingsverband tussen de VNG, de gemeente Utrecht, University College Roosevelt (UCR), het College voor de Rechten van de Mens en Amnesty Nederland dat zich op verschillende wijzen bezighoudt met de bevordering van mensenrechtenbescherming op lokaal niveau. Op 10 oktober 2014 heeft dit netwerk met financiële en deels inhoudelijke steun van het ministerie van BZK een landelijke inspiratiebijeenkomst "Mensenrechten en decentralisaties in het sociale domein" georganiseerd. Tijdens deze bijeenkomst kwamen raadsleden, (gemeente)ambtenaren en vertegenwoordigers van NGO's in Utrecht bijeen om in gesprek te gaan over welke rol mensenrechten spelen bij decentralisaties. Na een algemene plenaire sessie werden door de deelnemers in drie workshops good practices uitgewisseld, knelpunten geïdentificeerd en aanbevelingen gedaan over de onderwerpen "huiselijk geweld", "privacy" en "discriminatie, diversiteit en etnisch profileren". Zoals het Nationaal Actieplan Mensenrechten ook bevestigt, is mensenrechtenbescherming gebaat bij een voortdurende dialoog over het onderwerp. Kennisuitwisselingen zoals deze landelijke inspiratiebijeenkomst bieden een nuttige bijdrage aan deze dialoog.

Specifiek op het gebied van privacy is op 27 mei 2014 de beleidsvisie "Zorgvuldig en bewust: gegevensverwerking en privacy in een gedecentraliseerd sociaal domein" naar de Kamer gestuurd.[3] Deze visie is gebouwd op drie pijlers: 1) balans tussen de noodzakelijke gegevensverwerking vanuit de maatschappelijke opgave in het sociaal domein en borging van de privacy; 2) versterking van de positie van de burger; en 3) versterken van de democratische verantwoording over gegevensverwerking en privacy op lokaal niveau. Ook is op 7 november 2014 het Privacy Impact Assessment (PIA) over het sociale domein aangeboden aan de Kamer ("PIA gemeentelijke 3D informatiehuishouding"). De werkprocessen van verschillende gemeenten zijn doorgenomen op privacyrisico's op basis van modellen van VNG/KING. Het rapport biedt concrete handvatten en richtlijnen om de gemeentelijke organisatie van de gedecentraliseerde taken te toetsen op privacyrisico's en waar nodig maatregelen te treffen.

Gemeenten die ondersteuning behoeven bij het borgen van de privacy kunnen hiervoor contact opnemen met de privacyhelpdesk van het hierboven genoemde programma Gemeenten van de Toekomst. Daarnaast is inmiddels in samenwerking met de VNG en de ministeries van BZK, VenJ, VWS en SZW gestart met een reeks opleidingen voor medewerkers van gemeenten over het borgen van privacy bij de uitvoering van de gedecentraliseerde taken (de opleiding Privacy-3D).

Tijdens het AO Mensenrechten van 10 april 2014 kwam vanuit uw Kamer de vraag of ik aandacht voor deskundigheidsbevordering bij het waarborgen van mensenrechten kon aanjagen in overleg met de VNG en lokale bestuurders. Dit heb ik toegezegd en daarbij de Brede Regietafel Decentralisaties als geschikte plek genoemd om het onderwerp te beleggen. Het creëren van aandacht voor dit onderwerp is echter effectiever op grotere schaal, zoals door de verspreiding van kennismateriaal en het bespreken van het onderwerp bij grotere bijeenkomsten,

[3] *Kamerstukken II* 2013/14, 32 761, nr. 62.

zoals hierboven beschreven.

Overigens mag niet vergeten worden dat naast uitdagingen, de decentralisaties ook grote kansen bieden op het gebied van mensenrechten. Doordat de uitvoering van het beleid dichter bij de burger gebracht wordt, kan maatwerk geleverd worden, wat de rechten van burgers ten goede komt. Bij dit maatwerk zullen mensenrechtenstandaarden tegelijkertijd ook altijd een belangrijke ondergrens vormen: de beleidsvrijheid van gemeenten is immers niet onbegrensd, maar beweegt zich binnen een door de wetgever te bepalen bandbreedte.

Ten slotte is er in het geval dat er toch klachten over mogelijke mensenrechtenschendingen zijn een uitgebreide mensenrechteninfrastructuur beschikbaar. Dit wordt ook benadrukt en uitvoerig besproken in het Nationaal Actieplan Mensenrechten. Binnen gemeenten zijn er mogelijkheden om klachten kenbaar te maken, bijvoorbeeld via de antidiscriminatievoorzieningen (ADV's) en lokale ombudsmannen. Daarbuiten kan men zich bijvoorbeeld wenden tot het College voor de Rechten van de Mens, de Nationale Ombudsman, de Kinderombudsman, het College bescherming persoonsgegevens, of tot de rechter.

Mensenrechteneducatie
Het onderwijs heeft de belangrijke taak om kennis over te brengen over het functioneren van onze democratische rechtsstaat en over de kernwaarden die daaraan ten grondslag liggen. Deze waarden – o.a. neergelegd in onze Grondwet, in het Europees Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden (EVRM), in de Universele Verklaring van de Rechten van de Mens en de daarop gebaseerde VN-mensenrechtenverdragen – gelden altijd, overal en voor iedereen, ongeacht ras, geslacht, levensovertuiging, afkomst of enige andere status. Daarnaast hebben scholen de opdracht om bij te dragen aan de burgerschapsvorming van hun leerlingen.

In het Nationaal Actieplan Mensenrechten is aangekondigd dat door het ministerie van OCW het voorstel bezien werd om "mensenrechten, waaronder kinderrechten, expliciet te benoemen in de kerndoelen van het funderend onderwijs." Momenteel wordt een maatschappelijke debat gevoerd over de koersbepaling voor toekomstgericht funderend onderwijs, onder regie van het Platform Onderwijs2032. Burgerschap is één van de kernelementen in deze discussie. Ook mensenrechtenorganisaties en NGO's hebben de mogelijkheid om aan de discussies deel te nemen en hun wensen en ideeën kenbaar te maken. Het advies van het platform wordt eind 2015 verwacht. In de beleidsreactie zal de staatssecretaris van OCW ingaan op de positie van burgerschap in het curriculum.

De minister van Binnenlandse Zaken en Koninkrijksrelaties,

dr. R.H.A. Plasterk

Aan:Burgemeester van Geldrop-Mierlo
B.H.M. Link
Postbus:10101
5660GA,GELDROP.

Mierlo,17 september 2015

Onderwerp:
"decentralisaties mensenrechten"

Geachte Hoogedelachtbare burgemeester,

IFUD of Human Rights ziet zich ongelijk behandeld en achtergesteld door Uw gemeente.

Het a priori afstand nemen door de gemeente. Amnesty is de vaste en erkende gesprekspartner van Gemeente Geldrop-Mierlo op gebied van de mensenrechten.IFUD of Human Rights heeft geen erkenning in de cluster "vorming en educatie" door de gemeente (brief gemeente Geldrop-Mierlo aan de stichting,datum11 februari 2010,kenmerk:brmj020110/ 201001558) en krijgt hierdoor nimmer uitnodigingen,waardoor tevens het blokkeren creëren van een maatschappelijk podium.Maatwerk leveren aan de stichting is volgens de gemeente niet nodig.Het bij herhaling dreigen met verstoken geraken elementaire basisvoorzieningen van de Voorzitter van de stichting door stopzetten uitkering met 100%,(het voorzitterschap bij de stichting is een onbezoldigde bezigheid,en met de stichting strijdt hij tegen misstanden,het vermogen van de stichting is "Nihil",van tijd tot tijd doet de Heer van den Wittenboer kleine giften afkomstig van zijn uitkering voor persoonlijk levensonderhoud).Daarnaast is de Heer van den Wittenboer de eigenaar van Audio-Rarities (handelsregister K.v.K. Eindhoven,nummer 17090220).Audio-Rarities probeert bekendheid te geven aan de compact disc getiteld "Hitler's Inferno" welk sinds 25 juni 2014 permanent deel uitmaakt van de bibliotheek van "United States Holocaust Memorial Museum" library als

onderdeel van de verzameling van stukken over de holocaust om de wereld te waarschuwen en als getuigenis.Alle opbrengsten van Audio-Rarities en de Compact disc komen ten goede aan de stichting.In een brief door de Tweede Kamer der Staten Generaal,(DCO Bestuur en Onderwijs Commissie Justitie),kenmerk: JUST060608, betreft: Hitler's Inferno: inbreng hierover te gebruiken bij behandeling van wetsvoorstellen en voor vragen aan de regering,verwijs ook brief Werkplein regio Helmond namens het College van Burgemeester en Wethouders Geldrop-Mierlo aan de Heer van den Wittenboer,datum 31 mei 2012. De Heer van den Wittenboer heeft zich vooral geërgerd aan de brief van de gemeente Den Haag in 1995 en nu nog,waarin hij wordt verwezen naar het Leger des Heils! De ergernis betrof vooral het feit dat een gemeente in kwesties van mensenrechten niet naar instellingen als het Leger des Heils mag doorverwijzen of afschuiven.Daar zijn die instellingen niet voor.In "EU-richtsnoeren over mensenrechtenverdedigers" is het begrip samengevat wie zich mensenrechtenverdediger mag noemen en hun rol in de maatschappij.Op 26 juni 2013 verzond Jon Hermans-Vloedbeld,(burgemeester Almelo) een schriftelijke uitnodiging aan burgemeesters en raadsleden van alle gemeenten in Nederland.Het onderwerp: "Wat houdt u minimaal overeind?" bestuursdebat over mensenrechten op het Provinciehuis te Lelystad op 11 oktober 2013,met o.a. mensenrechten als uitgangspunt voor de decentralisaties in het sociaal domein.Op 5 januari 2015 vroeg de stichting in een brief het college van Burgemeester en wethouders van Geldrop-Mierlo aandacht voor de mensenrechten als randvoorwaarden in het beleid.Op 3 juni 2015 verscheen de brief van Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, R.H.A. Plasterk kenmerk:2015Z06197/2015D15940,onderwerp: Decentralisaties en Scholing i.r.t. het Nationaal Actieplan Mensenrechten.De stichting verkoopt een e-book in eigenbeheer via bol.com,de titel: "40 Maanden Oraniënburg".De stichting heeft in 2015 een verzameling van totaal 2943 bestanden (uploads) publiek beschikbaar voor online lezen en gratis downloaden.Onlangs in 2015, in opdracht van de stichting en onder leiding van J.P. van den Wittenboer verschenen het boek over de Europese Commissie,805 blz, "Europese Commissie Juncker",te koop aangeboden via payhip.com.

https://payhip.com/b/hYpm

Een onderzoek naar Hate Crime in Nederland door de stichting in 2014,is opgenomen in een verzameling van documenten door wetenschappers en onderzoekers over bestrijden haatmisdaden door "International Network for Hate Studies", Cardiff University.

http://www.archive.org/details/InternationalNetworkForHateStudies_201506

De kansen op de arbeidsmarkt zijn "Nihil" voor de Heer van den Wittenboer omdat de leeftijd 60 jaar een barriére vormt,(Verkennende studie Tegenprestatie WWB,2013) bepaalde onbeloonde maatschappelijk nuttige activiteiten te verrichten zoals dat in de Wet Werk en Bijstand is opgenomen"Voor wat,hoort wat" Het opzetten en geven cursussen.

Ik verzoek U het “overdrachtsdossier burgemeester” te controleren op de aanwezigheid van de brief door notaris mr. H.G.M.Th Derks,notaris te Budel,destijds verzonden op 27 januari 1997 aan de gemeente Mierlo t.a.v. burgemeester P.H.M. Jacobs-Aarts.

IFUD of Human Rights
De voorzitter
J.P. van den Wittenboer

Correspondence:Po.box 324, 5660AH Geldrop The Netherlands

Offices:Kastanje 28, 5731NK Mierlo The Netherlands

C.o.C.reg:41092925 Eindhoven N.L.

E-mail: ifudofhumanrights@yahoo.com

Internet: http://ifudofhumanrights.webs.com

Phone:+31 -(0)6 50 425 552

Geldrop-Mierlo

IFUD of Human Rights
De heer Van den Wittenboer
Kastanje 28
5731 NK MIERLO

uw brief	17 september 2015	*ons kenmerk*	nr. 2015.15974 /2015.16979
behandeld door	W. Geboers	*onderwerp*	decentralisaties mensenrechten
Geldrop	1 oktober 2015		

VERZONDEN 6 OKT 2015

Geachte heer Van den Wittenboer,

Op 17 september schreef u mij een brief over "decentralisaties mensenrechten". U verzocht mij om het "overdrachtsdossier burgemeester" te controleren op de aanwezigheid van een brief die u eerder toegezonden heeft aan de burgemeester van de voormalige gemeente Mierlo, mevr. Jacobs-Aarts.

Er heeft een overdracht van het dossier door mijn voorganger, de heer R. van Diessen, aan mij plaatsgevonden. Over de inhoud van dit overdrachtsdossier kan ik u, gelet op de wetgeving, geen mededelingen doen.

Heeft u nog vragen over deze brief? Of wilt u meer informatie? Neemt u dan contact op met afdeling Publiekszaken, te bereiken via telefoonnummer 14 040.

Hoogachtend,

B.H.M Link
burgemeester

Gemeentehuis Geldrop-Mierlo, Hofstraat 4, Geldrop | Postbus 10101, 5660 GA Geldrop | Tel. 14 040 | gemeente@geldrop-mierlo.nl | www.geldrop-mierlo.nl

HERINNERING

verzoekschrift
Artikel 227 VWEU

A A N T E K E N E N

Aan: EUROPEES PARLEMENT
Voorzitter van Commissies Peti / Verzoekschriften van het Europees Parlement
Cecilia Wikström
Wiertzstraat 60

B-1047 BRUSSEL
BELGIË

[language Dutch – taal Nederlands]

Heden, negen september tweeduizendvijftien heb ik Joannes Petrus van den Wittenboer van Nederlandse nationaliteit en voorzitter van de stichting IFUD of Human Rights die is ingeschreven bij de Kamer van Koophandel in Eindhoven onder nummer 41092925, een herinnering via aangetekende post verzonden op een eerder verzonden verzoekschrift Artikel 227 VWEU,via aangetekende post verzonden de data 24 juni 2015,onder aantekenregistratie nummer:RN688057471NL,

aan het Europees Parlement te Brussel,Petitions Committee European Parliament,B-1047 Brussels,Belgium,nadien ingeschreven in het algemene register onder nummer **0794/2015**,datum registratie verzoekschrift negenentwintig Juli tweeduizend en vijftien (29-07-2015),verzoeker J.P. van den Wittenboer woonachtig ten adres Kastanje 28, Mierlo,onder de stichting IFUD of Human Rights,te dezer zake woonplaats kiezende te Mierlo aan de Kastanje 28 ten woonadres van J.P. van den Wittenboer,(zelfde adres).Volledig adres: Kastanje 28,5731NK Mierlo - Nederland.

Inleiding:

De reden dat Ik deze herinnering verstuur is om geadreseerde te behoeden voor mogelijk nalaten:in strijd met het recht van de Europese Unie,heeft nagelaten een besluit te nemen,(nalaten artikel 265 VWEU).Op eerder verzoek van 24 juni 2015 is geen inhoudelijke reactie binnengekomen,het verzoekschrift is wel ingeschreven in het algemene register met een nummer.Daarom stel Ik een nieuwe termijn van twee maanden om aan de verplichting te voldoen.De termijn loopt vanaf de **datum negen september tweeduizendvijftien tot uiterlijk negen november tweeduizendvijftien**.

Haatmisdaden:

Lidstaat Nederland samen met Europese Commissie “Juncker”: handelen of niet handelen met gebruikmaking van verschillende laakbare instrumenten en constructies om deze misdaden te kunnen wegmaken / omzeilen om veroordeling te ontkomen.De aanhechtingen bij het verzoek om strafvervolging Artikel 119 GW lidstaat Nederland zijn dezelfde aanhechtingen als van Artikel 258 VWEU verzoekschrift inbreukprocedure aan Europese Commissie.Deze producties staan op data DvD-rom.Zowel Lidstaat Nederland alsmede de Europese Commissie is in het bezit van de producties.

Vermelding:

Het verzoekschrift Artikel 227 VWEU maakt thans onderdeel uit van een nieuw boek met de titel “Europese Commissie Juncker”,barcode,UPC nummer:1230000406284.het boek is verder geregistreerd onder ISBN nummer:9789402133653. In opdracht van IFUD of Human Rights onder leiding van J.P. van den Wittenboer,2015, 805 blz- pdf,(link voor downloaden) http://www.archive.org/details/EUROPESECOMMISSIEJUNCKER

Europese Commissie:

citeer eerste vice-voorzitter Europese Commissie Frans Timmermans uit zijn toespraak aan het Europees Parlement in Straatsburg,12 februari 2015-SPEECH/15/4402- oorspronkelijk in het

engels:er kan geen Europa zijn zonder de volledige eerbiediging van onze gemeenschappelijke waarden.Deze Commissie is gewijd aan het bevorderen van de grondrechten en de rechtsstaat. "Ik zal er persoonlijk op toezien dat de Commissie handelt in een **niet-ideologische** wijze,en beoordeelt ieder geval afzonderlijk eerlijk en objectief,op basis van de feiten van de zaak en op de wet",(einde citaat).

Kaderbesluit 2008/913/JBZ van de Raad:

Het publiekelijk verspreiden of uitdelen van geschriften,afbeeldingen of ander materiaal en het verregaand bagatelliseren van "Hitler's Inferno" en "40 maanden Oranienburg" in combinatie met de inzet door IFUD of Human Rights / J.P. van den Wittenboer het waarschuwen tegen de gevaren van fascisme en onrecht,en de herinnering van het verleden levendig te houden als les voor de toekomst.Elke lidstaat neemt de nodige maatregelen om ervoor te zorgen dat het instellen van onderzoek naar of vervolging,indien de gedraging op zijn grondgebied is begaan niet afhankelijk is alleen van de aangifte door de aangever.Leden van de Tweede Kamer der Staten Generaal zijn hierdoor verplicht –proactief optreden- de verzoekschriften om strafvervolging in handen te stellen van de Hoge Raad der Nederlanden.Lidstaat Nederland heeft dit nagelaten,en voldoet hierdoor niet aan het kaderbesluit. (Verzoek onderzoek naar strafbare feiten waarvan de Hoge Raad in eerste aanleg kennis neemt – te weten ministers en staatssecretarissen personen in hun hierna gemelde betrekking beweerdelijk gepleegde ambtsmisdrijven als bedoeld in art. 76 RO- maar de opdracht tot vervolging ter zake van zodanige ambtsmisdrijven kan niet worden gegeven door de Hoge Raad maar uitsluitend bij Koninklijk besluit of bij een besluit van de Tweede Kamer der Staten-Generaal (art. 119 Grondwet;art. 4-9 Wet van 22 april 1855,Stb.33,houdende regeling der verantwoordelijkheid van de hoofden der Ministeriële Departementen;art. 483 leden 1 en 2 Sv.).

OSCE / ODIHR:

Citeer "Guidelines on the Protection of Human Rights Defenders" blz 19- 20,(OSCE/ODIHR-2014,ISBN:978-92-9234-885-4.(citeer):

C. confronteren stigmatiseren en marginalisering

37.
Staatsinstellingen en ambtenaren moeten zich onthouden van lastercampagnes,negatieve beeldvorming of de stigmatisering van mensenrechtenverdedigers en hun werk.Dit omvat de negatieve etikettering van verdedigers van mensenrechten,in diskrediet brengen van mensenrechtenwerk en mensenrechtenverdedigers of belasteren op geen enkele manier.

38.
Lidstaten moeten proactief maatregelen nemen om lastercampagnes tegen stigmatisering van de verdedigers van de mensenrechten, met inbegrip begaan door derden.Ze moeten publicaties natrekken en erkennen de noodzaak om de verdedigers van de mensenrechten en het belang te beschermen van hun werk,geef erkenning op individuele mensenrechtenverdedigers en daardoor versterking van de legitimiteit en de status die van hun mensenrechtenwerk in de samenleving., (einde citaat).

Berne Conclusions:

Aangenomen standpunten tijdens de “Joint Conference” OSCE / ODIHR Switzerland 10- 11 June 2014, Hotel Schweizerhof,Berne,Switzerland, “The Budapest Document 20 Years On” The OSCE and Human Rights Defenders.Een panel met diverse deelnemers en sprekers o.a. Nils Muižnieks, Council of Europe Commissioner for Human Rights.

Europees Hof van Justitie:

[Arrest van het Europees Hof van Justitie (grote kamer) van 9 december 2014- Peter Schönberger / Europees Parlement,(Zaak C-261/13P)].

Het petitierecht komt voor in de artikelen 20, lid 2, sub d, VWEU, 24, tweede alinea, VWEU en 227 VWEU alsook in artikel 44 van het Handvest van de grondrechten van de Europese Unie.Uit deze bepalingen tezamen volgt dat het petitierecht tot de fundamentele rechten behoort en wordt uitgeoefend overeenkomstig het bepaalde in artikel 227 VWEU.Het petitierecht is een instrument waarmee de burger aan het democratisch leven van de Unie deelneemt.Het is een van de wegen van de rechtstreekse dialoog tussen de burger van de Unie en zijn vertegenwoordigers.Het petitierecht, dat onmisbaar is voor de participatie van en de democratische controle door de burgers, versterkt dus de communicatie tussen het Parlement en de burgers en ingezetenen van de Unie, aan wie het een open, democratisch en transparant mechanisme biedt waarmee zij, indien legitiem en gerechtvaardigd, een buitengerechtelijke oplossing voor hun klachten kunnen krijgen. Anderzijds is het verzoekschrift een instrument waarmee de burgers van de Unie achteraf kunnen controleren of het recht van de Unie correct is toegepast.Verzoekschriften zijn immers een waardevolle bron van informatie waarmee tekortkomingen in het Unierecht kunnen worden opgespoord. Het Parlement verplicht is te voorzien in mechanismen die verzoekers in staat stellen toegang tot het Parlement te krijgen via doeltreffende en transparante procedures. Alleen de invoering van deze mechanismen kan dus worden onderworpen aan toetsing door de Unierechter middels een beroep wegens nalaten krachtens artikel 265 VWEU. Toetsing door de Unierechter is alleen geboden wanneer het Parlement een zodanige houding aanneemt dat sprake is van een ernstige en voortdurende schending van het petitierecht waardoor de uitoefening van het petitieinstrument als zodanig in het gedrang komt, met name wanneer het weigert verzoekschriften in ontvangst te nemen of deze niet beantwoordt. Een dergelijke houding vormt

immers een schending van de verplichting die op het Parlement rust krachtens de artikelen 20 VWEU en 227 VWEU en artikel 44 van het Handvest.Het Parlement moet niet alleen de ontvankelijkheid van verzoekschriften onderzoeken, maar de ontvankelijk verklaarde verzoekschriften ook inhoudelijk beoordelen. De weigering om een verzoekschrift inhoudelijk te behandelen belemmert de uitoefening van het petitierecht en ontneemt de indiener van het verzoekschrift de mogelijkheid om een bijdrage te leveren aan de verbetering van het Unierecht en deel te nemen aan het democratisch bestel van de Unie in de zin van de artikelen 10, lid 3, VEU en 24, tweede alinea, VWEU. Een negatieve beslissing van het Parlement over de vraag of de voorwaarden van artikel 227 VWEU vervuld zijn moet zodanig worden gemotiveerd dat de indiener van het verzoekschrift kan zien aan welke van die voorwaarden in zijn geval niet is voldaan. Anders dan het Gerecht heeft geoordeeld in punt 28 van zijn arrest Tegebauer/Parlement (T-308/07, EU:T:2011:466, punt28), beantwoordt een beknopte motivering, zoals die in het besluit van het Parlement in de zaak waarin dat arrest is gewezen, aan dit vereiste.

IFUD of Human Rights

de voorzitter

J.P. van den Wittenboer

-aanhechtingen-

(de bevoegdheden van het Hof van Justitie van de Europese Unie)

Correspondence:Po.box 324, 5660AH Geldrop The Netherlands

Offices:Kastanje 28, 5731NK Mierlo The Netherlands

C.o.C.reg:41092925 Eindhoven N.L.

E-mail: ifudofhumanrights@yahoo.com

Internet: http://ifudofhumanrights.webs.com

Phone:+31 -(0)6 50 425 552

TE UWER INFORMATIE

Het Europees Parlement heeft te kampen met organisatorische problemen door de grote stroom van verzoekschriften waardoor de behandelingsprocedure een betrekkelijk lange termijn in beslag kan nemen.Om tijdelijk van het Verdrag VWEU te mogen afwijken - artikel 265 VWEU- is schriftelijke toestemming / vrijstelling van het Hof van Justitie nodig.

DE BEVOEGDHEDEN VAN HET HOF VAN JUSTITIE VAN DE EUROPESE UNIE

Deze EU-infopagina gaat over de bevoegdheden van het Hof van Justitie van de Europese Unie. Het Hof van Justitie omvat drie rechtscolleges: het eigenlijke Hof van Justitie, het Gerecht van eerste aanleg en het Gerecht voor ambtenarenzaken. Bij het Hof van Justitie kunnen verschillende rechtsmiddelen worden ingesteld (zie artikel 19 VEU, de artikelen 251 t/m 281 VWEU, artikel 136 Euratom en Protocol nr. 3 betreffende het statuut van het Hof van Justitie van de Europese Unie, gehecht aan de Verdragen).

HET HOF VAN JUSTITIE

A. Rechtstreekse beroepen tegen lidstaten of instellingen, organen en instanties van de Europese Unie.

Het Hof doet uitspraak in procedures tegen lidstaten of instellingen die de krachtens het recht van de Europese Unie op hen rustende verplichtingen niet zijn nagekomen.

1. Beroepen tegen lidstaten wegens niet-nakoming van een verplichting

Een dergelijke zaak wordt aanhangig gemaakt door:

— hetzij de Commissie, na een precontentieuze procedure (artikel 258): de staat krijgt de gelegenheid opmerkingen te maken (het met redenen omkleed advies) (1.3.8);

— hetzij door een lidstaat tegen een andere lidstaat, nadat de klacht eerst aan de Commissie is voorgelegd (art. 259).

Taken van het Hof van Justitie:

— vaststellen dat de betrokken lidstaat zijn verplichtingen niet is nagekomen. In dat geval is deze staat gehouden de maatregelen te nemen die nodig zijn ter uitvoering van het arrest van het Hof;

— indien de Commissie van oordeel is dat de betrokken lidstaat deze maatregelen niet heeft genomen, kan zij (na de hierboven genoemde precontentieuze procedure) het Hof van Justitie verzoeken de lidstaat een forfaitaire som of dwangsom op te leggen, waarvan de hoogte wordt bepaald door het Hof op basis van een voorstel van de Commissie (artikel 260).

2. Beroepen tegen EU-instellingen tot nietigverklaring en wegens nalaten

Inzake: gevallen waarin een instelling een handeling heeft vastgesteld die in strijd is met het recht van de Europese Unie (nietigverklaring: artikel 263) of gevallen waarin een instelling, in strijd met het recht van de Europese Unie, heeft nagelaten een besluit te nemen (nalaten: artikel 265).

Aanhangigmaking: een zaak kan aanhangig worden gemaakt door de lidstaten, de EU-instellingen of door natuurlijke of rechtspersonen als de zaak betrekking heeft op een handeling die zich tot hen richt.

Taken van het Hof: het Hof verklaart de handeling nietig of verklaart dat er sprake is van nalatigheid. De betrokken instelling is gehouden de maatregelen te nemen die nodig zijn ter uitvoering van het arrest van het Hof van Justitie (artikel 266).

3. Overige rechtstreekse beroepen

Beroepen tegen een besluit van de Commissie waarbij een onderneming een boete wordt opgelegd (artikel 261).

Vorderingen tot vergoeding van schade die door de instellingen of hun personeelsleden is veroorzaakt (artikel 268),

Beroepen van EU-ambtenaren en andere personeelsleden tegen hun instellingen (artikel 270) — de bevoegdheid om hierover uitspraak te doen ligt momenteel bij het Gerecht voor ambtenarenzaken (zie hieronder).

Beroepen inzake door de EU gesloten overeenkomsten (artikel 272).

B. Indirecte beroepen: vragen over de geldigheid van handelingen, opgeworpen voor een rechterlijke instantie van een der lidstaten (artikel 267)

Indien een zaak dat verlangt, is de nationale rechter in de regel gehouden het EU-recht toe te passen. Wanneer evenwel voor een nationale rechterlijke instantie een vraag wordt opgeworpen over de uitlegging van het Unierecht, kan deze instantie het Hof van Justitie verzoeken over deze vraag een uitspraak te doen. Wanneer de nationale instantie optreedt als hoogste rechter, dan is zij daartoe zelfs verplicht.

C. Bevoegdheid in hogere voorziening

De bevoegdheid van het Hof van Justitie om in hogere voorziening uitspraken van het Gerecht van eerste aanleg te toetsen, beperkt zich tot rechtsvragen. Een bij het Hof ingestelde hogere voorziening heeft geen schorsende werking.

Het Hof is tevens bevoegd om kennis te nemen van beroepen tegen uitspraken van gespecialiseerde rechtbanken (Gerecht voor ambtenarenzaken, zie hieronder) of beslissingen van het Gerecht van eerste aanleg over prejudiciële vragen. Deze heroverwegingsprocedure is een uitzonderlijke procedure, die slechts betrekking kan hebben op gevallen waarin een ernstig risico bestaat dat de eenheid of de samenhang van het recht van de Unie wordt aangetast.

Wanneer de uitspraak van het Hof gevolgen kan hebben voor de beslissing in de procedure waarop de beslissing in eerste aanleg betrekking had, is er geen sprake van een beroep "in het belang van de wet".

INVLOED

Het Hof van Justitie is bij de Europese integratie een belangrijke factor en volgens sommigen zelfs een stuwende kracht gebleken.

A. Algemeen

Het arrest van het Hof van Justitie in de zaak *Costa/Enel* van 15 juli 1964 is van doorslaggevend belang geweest, omdat het Hof daarin bepaalde dat het Europese recht een autonome rechtsorde is die voorrang heeft boven het nationale recht van de lidstaten. Ook de uitspraak in de zaak *Van Gend & Loos* van 5 februari 1963 was van groot belang, omdat daarin werd bepaald dat

het gemeenschapsrecht rechtstreeks voor de nationale rechter ingeroepen kan worden. Andere belangrijke uitspraken hebben betrekking op de bescherming van de rechten van de mens, zoals het arrest van 14 mei 1974 in de zaak *Nold*, waarin het Hof van Justitie verklaarde dat de fundamentele rechten een integrerend deel uitmaken van de algemene rechtsbeginselen waarvan het de eerbiediging verzekert (2.1.2).

B. Specifieke onderwerpen

— Het recht van vestiging: het arrest van 8 april 1976 in de zaak *Royer*, waarin het Hof bevestigde dat een onderdaan van een lidstaat het recht heeft om op het grondgebied van willekeurig welke andere lidstaat te verblijven, onafhankelijk van de vraag of hem door het ontvangende land een verblijfsvergunning is verstrekt.

— Het vrije verkeer van goederen: het arrest van 20 februari 1979 in de zaak *Cassis de Dijon*, waarin het Hof van Justitie bepaalde dat elk product dat in een lidstaat legaal is geproduceerd en in de handel gebracht, in beginsel moet worden toegelaten tot de markt van elke andere lidstaat.

— De externe bevoegdheid van de Gemeenschap: het arrest van 31 maart 1971 in de zaak *Commissie/Raad* (*AETR-arrest*), waarin het Hof vaststelde dat de Gemeenschap de bevoegdheid heeft internationale overeenkomsten te sluiten op terreinen die onder het toepassingsgebied van de communautaire wetgeving vallen.

— Recente arresten waarin het Hof bepaalt dat lidstaten die richtlijnen niet of niet tijdig in nationaal recht omzetten, schadevergoeding moeten betalen.

— Diverse arresten met betrekking tot sociale zekerheid en mededinging.

— Arresten inzake schendingen van het Gemeenschapsrecht door de lidstaten; deze arresten zijn van essentieel belang voor de goede werking van de gemeenschappelijke markt.

Een van de voornaamste verdiensten van het Hof van Justitie was de formulering van het uitgangspunt dat de Verdragen niet star moeten worden uitgelegd, maar moeten worden bezien in het licht van de stand van de integratie en van de doelstellingen van de Verdragen zelf. Dit beginsel heeft het mogelijk gemaakt wetgeving uit te vaardigen op enkele terreinen waarvoor in de Verdragen geen specifieke bepalingen zijn opgenomen, zoals de strijd tegen aantasting van het milieu (zo heeft het Hof van Justitie in het arrest van 13 september 2005 (zaak C-176/03) bepaald dat het de Europese Unie is toegestaan maatregelen te nemen die verband houden met het strafrecht, indien dit "noodzakelijk" is om doelstellingen op het gebied van milieubescherming te bereiken).

HET GERECHT VAN EERSTE AANLEG

(1.3.9.)

A. Bevoegdheden van het Gerecht van eerste aanleg (artikel 256)

Het Gerecht van eerste aanleg is bevoegd om in eerste aanleg kennis te nemen van beroepen op de volgende terreinen, tenzij het beroep wordt ingesteld door een lidstaat, een EU-instelling of de Europese Centrale Bank, in welk geval alleen het Hof van Justitie bevoegd is (artikel 51 van het statuut van het Hof van Justitie van de Europese Unie ("het statuut")):

— beroepen tot nietigverklaring of beroepen wegens nalaten, ingesteld tegen de instellingen (artikelen 263 en 265);

— beroepen tot vergoeding van schade die door de instellingen is veroorzaakt (artikel 268); beroep inzake door of namens de Unie gesloten publiekrechtelijke dan wel privaatrechtelijke overeenkomsten (artikel 272).

Via het Statuut kan de bevoegdheid van het Gerecht van eerste aanleg tot andere terreinen worden uitgebreid.

Tegen de uitspraken van het Gerecht van eerste aanleg staat beroep open bij het Hof van Justitie, echter uitsluitend voor zover het rechtsvragen betreft.

B. Bevoegdheden in eerste en laatste aanleg

Het Gerecht van eerste aanleg is bevoegd prejudiciële beslissingen te nemen (art. 267) inzake de in het statuut genoemde aangelegenheden. Deze beslissingen kunnen bij uitzondering door het Hof van Justitie worden heroverwogen, wanneer er "een ernstig risico bestaat dat de eenheid of de samenhang van het Gemeenschapsrecht wordt aangetast". De heroverwegingsprocedure heeft geen schorsende werking.

Wanneer de uitspraak van het Hof van Justitie gevolgen kan hebben voor de beslissing in de procedure waarop het arrest van het Gerecht van eerste aanleg betrekking had, is er geen sprake van een beroep "in het belang van de wet":

— in geval van heroverweging van beslissingen van het Gerecht van eerste aanleg inzake beslissingen van gespecialiseerde rechtbanken (zie hieronder) verwijst het Hof van Justitie de zaak terug naar het Gerecht van eerste aanleg, dat gebonden is aan de beslissing van het Hof over de rechtsvragen. Wanneer echter de beslissing in de zaak, gelet op het resultaat van de heroverweging, gebaseerd is op dezelfde feiten als de feiten die ter kennis van het Gerecht van eerste aanleg waren gebracht, oordeelt het Hof van Justitie zelf over de zaak; wanneer het Hof van Justitie bij heroverweging van uitspraken van het Gerecht van eerste aanleg over prejudiciële vragen van oordeel is dat er een ernstig gevaar bestaat dat de eenheid of de samenhang van het EU-recht wordt aangetast, komt de beslissing van het Hof in de plaats van die van het Gerecht (artikel 256; artikel 62 van het statuut).

C. Vatbaarheid voor beroep

Tegen beslissingen van het Gerecht van eerste aanleg kan binnen twee maanden een tot rechtsvragen beperkte hogere voorziening worden ingesteld bij het Hof van Justitie.

HET GERECHT VOOR AMBTENARENZAKEN VAN DE EUROPESE UNIE

(1.3.9.)

Om het Gerecht van eerste aanleg te ontlasten, voorziet artikel 257 VWEU in de mogelijkheid tot het instellen van gespecialiseerde rechtbanken die in eerste aanleg kennis nemen van bepaalde categorieën van beroepen "in specifieke aangelegenheden". Overeenkomstig deze bepaling is bij Besluit 2004/752/EG, Euratom van de Raad van 2 november 2004 een Gerecht voor ambtenarenzaken van de Europese Unie ingesteld, toegevoegd aan het Gerecht van eerste aanleg. Krachtens artikel 270 VWEU is het Gerecht voor ambtenarenzaken bevoegd om kennis te nemen van geschillen tussen de Europese Unie en haar personeelsleden. Het gaat om ongeveer 120 zaken per jaar op een personeelsbestand van ongeveer 35 000 personen. Deze geschillen betreffen niet alleen de arbeidsverhoudingen als zodanig (bezoldiging, loopbaanverloop, aanwerving, tuchtmaatregelen, enz.), maar ook de socialezekerheidsregelingen (ziekte, ouderdom, invaliditeit, arbeidsongevallen, enz.).

Het Gerecht voor ambtenarenzaken is ook bevoegd voor de geschillen tussen organen en instanties en hun personeelsleden ten aanzien waarvan het Hof van Justitie van de Europese Unie bevoegd is verklaard (bijvoorbeeld geschillen tussen Europol, het Bureau voor harmonisatie binnen de interne markt (BHIM) of de Europese Investeringsbank en hun personeelsleden).

Het kan evenwel geen kennis nemen van geschillen tussen nationale overheidsinstanties en hun personeelsleden.

Tegen beslissingen van het Gerecht voor ambtenarenzaken kan binnen twee maanden een tot rechtsvragen beperkte hogere voorziening worden ingesteld bij het Gerecht van eerste aanleg.

Udo Bux
04/2014

Intermediary Foundation of the Universal Declaration of Human Rights

Aan: Europese Commissie
Vice-Voorzitter Frans Timmermans

Rue de la Loi / Wetstraat 200
B-1049 BRUSSEL
BELGIË.

Your letter of
Your reference
Our letter of
Our reference
Enclosure(s)
Contact
Direct line
Re *Ter Uwer informatie*

Mierlo,24 Juni 2015

Geachte heer Timmermans,

Als vicevoorzitter van de Europese Commissie zet U zich in voor het bestrijden van "hate crime" de Commissie heeft reeds aangekondigd dat de discussie dit jaar over «Tolerantie» zal gaan, met specifieke aandacht voor anti-discriminatie en "hate crime".[Colloquium over grondrechten in de EU van 1-2 Oktober 2015 te Brussel]
Als Tweede Kamerlid van lidstaat Nederland bent u in het verleden op de hoogte gesteld door de heer K.H. de Werd,dat zowel Donner als de Wijkerslooth de Weerdesteijn worden afgebeeld als nazi's en Hitler op het internet en via e-mail.Er hebben destijds twee artikelen in de Telegraaf gestaan,en er was aandacht op de televisie.

Correspondence:Po.box 324, 5660AH Geldrop The Netherlands
Offices:Kastanje 28, 5731NK Mierlo The Netherlands
C.o.C.reg:41092925 Eindhoven N.L.
E-mail: ifudofhumanrights@yahoo.com
Internet: http://ifudofhumanrights.webs.com/
Phone:+31 -(0)6 50 425 552

Op 5 januari 2015 heb ik de Europese Commissie (DG-justitie) verzocht om een inbreukprocedure in te leiden tegen Nederland.De Commissie is niet verplicht om inbreukprocedures in te leiden,maar moet wel degelijk motiveren.In 2012 is er ook een nieuwe regel van kracht geworden COM (2012) 154 final.Alle klachten worden in deze applicatie geregistreerd.Binnen vijftien dagen na ontvangst wordt een ontvangstbewijs gestuurd waarin wordt bevestigd dat de brief als klacht werd geregistreerd. Voordien werd een brief pas geregistreerd na beoordeling van de inhoud ervan.Overwegende de legitieme verwachting mogen koesteren dat er voor de kwesties aanhangig gemaakt bij de Europese Commissie,de verzoekschriften zonder onnodige vertraging een oplossing wordt gevonden binnen het juridische kader van de Europese Unie.Aldus dat de zaken worden behandeld op onpartijdige en eerlijke wijze en binnen een redelijke tijdsspanne, (verwijs naar het verslag van zittingsdocument Europees Parlement van datum 24 september 2013,nummer: A7-0229/2013): blijkt sprake van vertragingsacties,verkeerd interpreteren van feiten,bewust onzorgvuldig dossierbeheer,marginalisatie,verdraaien van feiten,elkaar de hand boven het hoofd houden. Gezien de omstandigheden zou het wellicht eventueel beter zijn de gehele Europese Commissie "Juncker" tot aftreden te dwingen door middel van een motie van afkeuring(artikel 234 EU-werkingsverdrag).Indien de motie van afkeuring wordt aangenomen met een meerderheid van twee derde van de uitgebrachte stemmen,moeten de leden van de Commissie collectief ontslag nemen en moet ook de hoge vertegenwoordiger van de Unie voor buitenlandse zaken en veiligheidsbeleid zijn functie in de Commissie neerleggen.

Hate crime is strafbaar,(niet alleen voor de lidstaat maar ook door de EU en de Commissie zelf).Alle vormen en uitingen van racisme en vreemdelingenhaat zijn onverenigbaar met de waarden waarop de EU is gegrondvest.Het Verdrag van Lissabon bepaalt dat de Unie ernaar moet streven een hoog niveau van veiligheid te waarborgen,door middel van maatregelen ter voorkoming en bestrijding van criminaliteit,racisme en vreemdelingenhaat.De Commissie is de hoedster van de Verdragen en heeft de verantwoordelijkheid om te waarborgen dat de waarden waarop de EU gegrondvest is, worden geëerbiedigd en om het algemene belang van de Unie te beschermen. De Commissie moet in dit verband derhalve een actieve rol op zich nemen. Gebruik van symbolen: er is geen enkel symbool, zelfs niet het hakenkruis, dat op zichzelf strafbaar is op grond van een van de discriminatieartikelen.Het hakenkruis is beledigend als over een groep als daarmee het nationaal-socialistisch gedachtegoed wordt uitgedragen.Datzelfde geldt voor andere symbolen die aan het nazi-gedachtegoed kan worden

Correspondence:Po.box 324, 5660AH Geldrop The Netherlands
Offices:Kastanje 28, 5731NK Mierlo The Netherlands
C.o.C.reg:41092925 Eindhoven N.L.
E-mail: ifudofhumanrights@yahoo.com
Internet: http://ifudofhumanrights.webs.com/
Phone:+31 -(0)6 50 425 552

gerelateerd,zoals bijvoorbeeld SS-tekens.Bij het ene nazi-symbool zal echter eerder duidelijk zijn dat het nationaal-socialistisch gedachtegoed wordt uitgedragen dan het andere.Voor de symbolen die ontstaan zijn in de nazi-tijd,bijvoorbeeld het SS-teken, geldt,dat het nationaalsocialistisch gedachtegoed bijna per definitie wordt uitgedragen.Het opzettelijk tonen van dit teken is al voldoende voor het uitdragen van het nazistisch gedachtegoed.De SS stond immers voor de vernietiging en uitroeiing van de tegenstanders van het naziregime,met name joden, zigeuners en homoseksuelen.Het hakenkruis bestond echter al voor de nazi-tijd als een teken met een heel andere, agressieloze betekenis.Daarom is,in vergelijking met het SS-teken,meer nodig om te spreken van het uitdragen van een bepaald gedachtegoed.Voor andere dan nazi-symbolen geldt dat het gebruik van een symbool door de context strafbaarheid kan opleveren, als het een belediging over een groep is,(HOGE RAAD: ECLI:NL:PHR:2009:BJ6941). Op datum 1 september 2014 heb Ik een brief verzonden aan de Tweede Kamer der Staten Generaal van lidstaat Nederland over deze “hate crime”.Op datum 24 Juni 2015 verstuur Ik een Art. 227 VWEU verzoek aan het Europees Parlement “Petitie Comité”.
Voorzitter van de Europese Commissie **Jean-Claude Juncker**,Luxemburg 10 december 2014: "We leggen vandaag niet zomaar een eed af. We beloven onafhankelijk op te treden en het Handvest van de grondrechten te eerbiedigen. Het hele college getuigt hiermee van zijn krachtige politieke voornemen ervoor te zorgen dat het Handvest wordt geëerbiedigd en dat alle EU-beleidsmaatregelen waarvoor de Commissie verantwoordelijk is, met het Handvest in overeenstemming zijn. Dit is bepaald geen bagatel – we zijn wie we zijn dankzij onze waarden.",(IP/14/2511).

IFUD of Human Rights
Voorzitter
J.P. van den Wittenboer

Correspondence:Po.box 324, 5660AH Geldrop The Netherlands
Offices:Kastanje 28, 5731NK Mierlo The Netherlands
C.o.C.reg:41092925 Eindhoven N.L.
E-mail: ifudofhumanrights@yahoo.com
Internet: http://ifudofhumanrights.webs.com/
Phone:+31 -(0)6 50 425 552

UNITED STATES HOLOCAUST MEMORIAL MUSEUM 100 Raoul Wallenberg Place, SW Washington DC 20024-2126 1-866-998-7466 ushmm.org

2 6 JUIN 2015

J.P. Van Den Wittenboer
Kastanje 28
Mierlo, Noord-Brabant 5731 NK
NETHERLANDS

Dear Member,

As a member of the United States Holocaust Memorial Museum, you play a critical role in an institution of global reach and growing impact, and we couldn't be more grateful.

Thanks to the support of friends like you, our educational programs are helping young people learn not just the history of the Holocaust, but its lessons. Our training programs help members of the military, police officers, judges, and others see that Hitler could not have succeeded without the collaboration of many leaders and professionals—and that they therefore have the power and the responsibility to stand up in the face of hatred and injustice.

We have opened long-closed Holocaust archives like the International Tracing Service and the UN War Crimes Archive, which today are being used to help survivors discover the fates of loved ones, scholars pursue new research, and more.

Around the world, we are racing against the clock to collect the evidence of the Holocaust and advancing the frontiers of Holocaust research. Online, we have become the Internet's leading authority on the Holocaust, one available in more than a dozen languages, including those spoken in societies where the lessons of the Holocaust are most needed.

As a member of the Museum, you have been integral to our success. And today your membership support is more important than ever.

That's why I recently wrote to ask that you renew your support of the Museum for 2015. If you've already sent your gift, thank you. But if you haven't, I hope you will rush your 2015 annual membership contribution without further delay.

The need for your renewed commitment couldn't be more urgent. Here at the Museum, we are gravely concerned that Holocaust denial and distortion are on the rise, and that antisemitism is fueling violence and demonstrations in the very countries where the Holocaust occurred. The fact that both are happening just as we're losing our best teachers, the survivors, is no coincidence.

(over, please)

The day is not far off when we alone will be the bearers of Holocaust memory, and it will be up to us to ensure that the world learns the lessons it so urgently needs.

The Holocaust teaches us that the capacity for inhumanity always resides within us—that we must always be vigilant, always on guard against the first sign of hate.

And it teaches us, with equal power, that each of us <u>does</u> have the capacity—and with it, the responsibility—to make a difference in the face of hatred.

Will you help us teach those lessons? Can we count on you in the coming year—at this crucial juncture in the history of Holocaust remembrance, this turning point when the eyewitness generation is diminishing and hate and denial are on the rise?

I hope so. Please—without delaying even a moment longer—send your generous renewal gift to the Museum today.

The challenges ahead are great, and we need you with us. Thank you so much for your continued commitment to the United States Holocaust Memorial Museum.

Sincerely,

Sara J. Bloomfield

Sara J. Bloomfield
Director

P.S. The alarming rise of hate around the world is occurring just as we are losing our best teachers, the survivors. At this turning point, your support of our Museum is more important than ever. I hope we can count on you to renew your membership today.

EUROPESE COMMISSIE
Kabinet van Eerste Vicevoorzitter Frans Timmermans

Lid van het Kabinet

Brussel, 13. 08. 2015
BM/kr Ares (2015) 2715348

Geachte heer Van den Wittenboer,

De eerste vicevoorzitter van de Europese Commissie, de heer Frans Timmermans, belast met betere regelgeving, interinstitutionele betrekkingen, rechtsstatelijkheid en het handvest van de grondrechten, heeft mij gevraagd u te bedanken voor uw brief van 24 juni 2015 inzake de toepassing door Nederland van de Europese regelgeving inzake racisme.

In uw brief vraagt u de Commissie om tegen Nederland een inbreukprocedure in te leiden wegens niet-nakoming van zijn verplichtingen op grond van Kaderbesluit 2008/913/JBZ betreffende de bestrijding van bepaalde vormen en uitingen van racisme en vreemdelingenhaat door middel van het strafrecht. Tevens stelt u dat de Commissie niet aan haar verplichting heeft voldaan om onpartijdig, eerlijk en binnen een redelijke termijn klachten te behandelen en haar rol als hoedster van de verdragen niet vervult bij het waarborgen van de fundamentele waarden van de Unie en het bestrijden van criminaliteit, racisme en vreemdelingenhaat in de lidstaten, zoals het gebruik van nazisymbolen. U wijst ook op een brief die u in september 2014 hebt verstuurd aan het Nederlandse parlement over deze kwestie en een petitie die u op 24 juni 2015 hebt verstuurd aan het Europees Parlement overeenkomstig artikel 227 VWEU.

U hebt deze kwesties reeds aangekaart bij de Europese Commissie in een klacht die wij hebben ontvangen op 8 januari 2015 (referentienummer CHAP(2015)00917) en in een later schrijven van 21 april 2015. De bevoegde dienst heeft u, na een zorgvuldige analyse van uw op- en aanmerkingen, een uitvoerig antwoord gegeven bij brief van 21 april 2015. In deze brief zijn de lopende acties en initiatieven van de Commissie beschreven die de correcte en effectieve omzetting en uitvoering van het kaderbesluit betreffende racisme en vreemdelingenhaat door de lidstaten moeten garanderen.

./..

De heer J.P. VAN DEN WITTENBOER
Voorzitter
Intermediary Foundation of the Universal Declaration of Human Rights

E-mail: ifudofhumanrights@yahoo.com

Commission européenne, B-1049 Bruxelles / Europese Commissie, B-1049 Brussel - Belgium.
Office: BERL 12/231. Phone: direct line (32-2) 2965058

E-mail: bernd.martenczuk@ec.europa.eu

Na deze brief, en omdat u geen nieuwe wezenlijke informatie heeft verstrekt, heeft de Commissie u bij brief van 15 juni 2015 op de hoogte gesteld van haar beslissing om het dossier betreffende uw klacht af te sluiten.

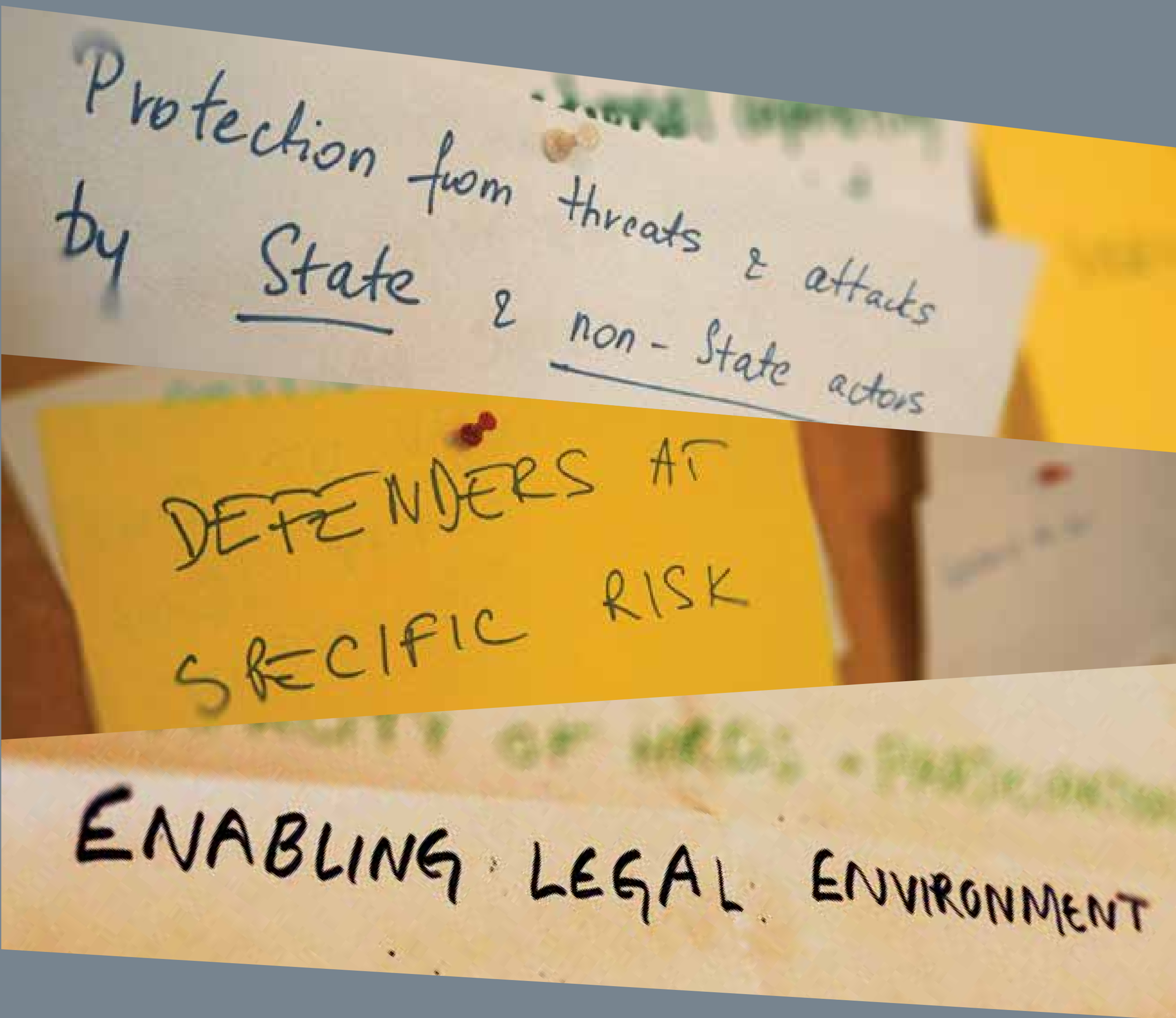
Zoals reeds werd aangegeven in de aangehaalde antwoorden, kunnen individuele personen aan de Commissie weliswaar feitelijke of juridische informatie overleggen over aan een lidstaat toe te rekenen maatregelen of praktijken die onverenigbaar met een bepaling of beginsel van het recht van de Unie worden geacht, maar heeft de Commissie discretionaire bevoegdheid om te beslissen of de instelling van een procedure tegen een lidstaat wegens niet-nakoming van zijn verplichtingen op grond van het recht van de Unie op zijn plaats is.

Sta mij niettemin toe u nogmaals te verzekeren dat de Commissie streng toezicht uitoefent op de omzetting en uitvoering van het kaderbesluit door Nederland, net zoals zij dat doet voor alle andere lidstaten. Nu de Commissie sinds 1 december 2014 de bevoegdheid heeft om onder controle van het Hof van Justitie toezicht te houden op de toepassing van kaderbesluiten, is zij begonnen bilaterale dialogen met de lidstaten te voeren, inclusief met Nederland, om de volledige en correcte omzetting en uitvoering van het kaderbesluit te verzekeren. De Commissie zal niet aarzelen om op die basis inbreukprocedures in te leiden indien nodig.

Met vriendelijke groet,

Bernd MARTENCZUK

Guidelines on the Protection of Human Rights Defenders



OSCE
ODIHR

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Guidelines on the Protection of Human Rights Defenders

Contents

List of abbreviations

ACHR	American Convention on Human Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)
ECtHR	European Court of Human Rights
EU	European Union
FCNM	Council of Europe Framework Convention for the Protection of National Minorities
IAHCR	Inter-American Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Covenant on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
LGBTI	Lesbian, gay, bisexual, transgender and intersex
NGO	Non-governmental organization
NHRI	National human rights institution
ODIHR	Office for Democratic Institutions and Human Rights
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OSCE	Organization for Security and Co-operation in Europe
PACE	Parliamentary Assembly of the Council of Europe
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations General Assembly

FOREWORD

Twenty years ago, OSCE heads of state and government adopted the 1994 Budapest Document "Towards a Genuine Partnership in a New Era," in which they reaffirmed that human rights and fundamental freedoms, the rule of law and democratic institutions are the foundations of peace and security. They also emphasized the need for protection of human rights defenders.

The need for this is firmly rooted in the Helsinki Final Act of 1975, the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE and other OSCE human dimension commitments, all of which recognized the essential role of human rights defenders and civil society in fulfilling our common goals in the OSCE. There can be no guarantee of fundamental freedoms or human rights in a world where human rights defenders continue to be persecuted for their work.

At the 2010 OSCE Summit in Astana, participating States again acknowledged the important role played by civil society and free media in helping them ensure full respect for human rights, fundamental freedoms, democracy and the rule of law (Astana Commemorative Declaration, 2010).

Despite these assurances, civil society organizations have repeatedly brought to the attention of the OSCE, including ODIHR, ongoing issues of concern that hinder their work in defending human rights, as well as the serious risks they sometimes face. On the margins of the 2012 OSCE Ministerial Council in Dublin, a network of civil society organizations issued a joint declaration in which they expressed grave concern for the security of human rights defenders in the region and called on the OSCE to develop guidelines on their protection.[1] In response to this appeal, and in line with its mandate, ODIHR embarked on the project to develop the present Guidelines.

There have been many achievements over the two decades since the adoption of the Budapest Document. But it is also clear that many challenges remain for human rights defenders, and that new, serious challenges have arisen. It is our hope that these Guidelines on the Protection of Human Rights Defenders will serve as a basis for a renewed, genuine partnership between governments and human rights defenders to effectively address these challenges and combine efforts with the shared objectives of promoting respect for human rights and fundamental freedoms in the OSCE region.

Ambassador Janez Lenarčič
Director, OSCE Office for Democratic Institutions and Human Rights

1 "Dublin Declaration – Security of human rights defenders: time for OSCE to act", adopted by the participants of the Parallel Civil Society Conference, Dublin, 5 December 2012, <http://www.civicsolidarity.org/sites/default/files/dublin_declaration_on_human_rights_defenders_final.pdf>.

INTRODUCTION

> *"It was particularly gratifying for me to note the Committee's citation, which emphasizes the defense of human rights as the only sure basis for genuine and lasting international cooperation … I am convinced that international confidence, mutual understanding, disarmament, and international security are inconceivable without an open society with freedom of information, freedom of conscience, the right to publish, and the right to travel and choose the country in which one wishes to live."*
>
> *(Andrei Sakharov, 1975)* [2]

In the 1975 Helsinki Final Act, the participating States of what was then the Conference for Security and Co-operation in Europe (CSCE) recognized the right of everyone to know and act upon their rights, and later the right of the individual to seek and receive assistance from others in defending human rights and to assist others in defending human rights.[3] In the context of the drafting of the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, they also emphasized the need for the protection of human rights defenders (Budapest Document 1994). Thus, the right to defend human rights as recognized in the UN Declaration is firmly established in OSCE commitments.

The present guidelines are based on OSCE commitments and universally recognized human rights standards that OSCE participating States have undertaken to adhere to. The guidelines are informed by key international instruments relevant to the protection of human rights defenders, in particular the UN Declaration mentioned above. The guidelines do not set new standards or seek to create "special" rights for human rights defenders but concentrate on the protection of the human rights of those who are at risk as a result of their human rights work. As such, the guidelines aim to contribute to promoting equal protection of human rights for all.

OBJECTIVES AND METHODOLOGY

These guidelines build on the longstanding engagement of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) with human rights defenders, and their situation and the environment in which they operate have been a focus of the work of the Office in the past.[4] In line with ODIHR's mandate, these guidelines aim to support participating States in the implementation of their human dimension commitments

2 Nobel Lecture, December 11, 1975.

3 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990.

4 Apart from its publications on a variety of related topics, ODIHR has published two specific reports on the situation of human rights defenders: "Human Rights Defenders in the OSCE Region: Our Collective Conscience", 10 December 2007, <http://www.osce.org/odihr/29714>; and "Human Rights Defenders in the OSCE Region: Challenges and Good Practices"; 15 December 2008, <http://www.osce.org/odihr/35652>.

related to the protection of human rights defenders. ODIHR is mandated to assist OSCE participating States to "ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and … to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (Helsinki Document, 1992).

The guidelines are based on a consultation process conducted with the broad participation of human rights defenders, international experts, partners from other intergovernmental organizations and representatives of civil society, national human rights institutions and OSCE participating States. Following an initial stakeholders' meeting in June 2013, ODIHR held a series of sub-regional consultation meetings over a two-month period with human rights defenders from across the OSCE region, with the aim of identifying the key issues arising within diverse regional and country contexts.[5] In addition, ODIHR issued an "open call" for written contributions that was circulated widely throughout the region to reach out to civil society more broadly. An advisory group composed of 12 human rights defenders and international experts assisted with reviewing and further developing early drafts of the guidelines. In May 2014, ODIHR held a consultation meeting with participating States to seek their views and input on the advanced and consolidated draft of the document.

ACKNOWLEDGEMENTS

ODIHR expresses its thanks for the invaluable contributions of all those who participated in the consultation process. This includes human rights defenders, experts and partners from other international mechanisms working for the enhanced protection of human rights defenders, including the desk officers and staff working with the UN Special Rapporteur on the situation of human rights defenders; the Council of Europe Commissioner for Human Rights; the Rapporteur on the situation of human rights defenders of the Parliamentary Assembly of the Council of Europe; the European External Action Service; the Rapporteurship on Human Rights Defenders of the Inter-American Commission on Human Rights; and colleagues from the Office of the OSCE Representative on Freedom of the Media. In particular, ODIHR would like to thank the members of the advisory working group for their expert advice and contributions to this document. Furthermore, ODIHR is grateful to participating States that contributed to the document during the consultation process.

5 Sub-regional consultation meetings included around 110 human rights defenders working in a range of countries on a variety of different human rights issues. Two meetings were held in September 2013. The first included human rights defenders from Andorra, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, France, Finland, Germany, Greece, the Holy See, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovenia, Slovakia, Spain, Sweden, Switzerland, the United Kingdom and the United States. The second gathered human rights defenders from Belarus, Moldova, the Russian Federation and Ukraine. Two more meetings were held in October 2013. The first of these brought together human rights defenders from Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and Turkey. Representatives from Kosovo also took part. The fourth consultation meeting gathered human rights defenders from Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Turkmenistan and Uzbekistan.

SECTION A

Guidelines on the Protection of Human Rights Defenders

1. **The right to defend human rights is a universally recognized right:** It derives from universal human rights, which are indivisible, interdependent and interrelated, and which OSCE participating States have committed to respect, protect and fulfil for everyone on their territory and subject to their jurisdiction.

2. **Who is a human rights defender?** Human rights defenders act "individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms"[6] at the local, national, regional and international levels. They recognize the universality of human rights for all without distinction of any kind, and they defend human rights by peaceful means.

3. **Human rights defenders play a vital role in democratic societies**: The active involvement of people, groups, organizations and institutions is essential to ensure continuing progress towards the fulfilment of international human rights. Civil society – among others – assists states to ensure full respect for human rights, fundamental freedoms, democracy and the rule of law. Accordingly, human rights defenders perform important and legitimate functions in democratic societies. State authorities should respect that dissenting views may be expressed peacefully in democratic societies and should publicly acknowledge the important and legitimate role of human rights defenders.

4. **Need for protection of human rights defenders:** Human rights defenders face specific risks and are often targets of serious abuses as a result of their human rights work. Therefore, they need specific and enhanced protection at local, national and international levels. Certain groups of human rights defenders are exposed to heightened risks due to the specific nature of their work, the issues they are working on, the context in which they operate, their geographical location or because they belong to or are associated with a particular group.

5. **The nature of state obligations:** The primary responsibility for the protection of human rights defenders rests with states. States have both positive and negative obligations with regard to the rights of human rights defenders. In line with their duties under international law – according to which they must respect, protect and fulfil human rights – they have an obligation to:

6 UN Declaration on Human Rights Defenders, Article 1, <http://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>.

a) refrain from any acts that violate the rights of human rights defenders because of their human rights work;

b) protect human rights defenders from abuses by third parties on account of their human rights work and to exercise due diligence in doing so; and

c) take proactive steps to promote the full realization of the rights of human rights defenders, including their right to defend human rights.

6. **A safe and enabling environment to empower human rights work:** Effective protection of the dignity, physical and psychological integrity, liberty and security of human rights defenders is a pre-requisite for the realization of the right to defend human rights. Furthermore, a safe and enabling environment requires the realization of a variety of other fundamental human rights that are necessary to carry out human rights work, including the rights to freedom of opinion and expression, peaceful assembly and association, the right to participate in public affairs, freedom of movement, the right to private life and the right to unhindered access to and communication with international bodies, including international and regional human rights mechanisms.

I. GENERAL PRINCIPLES UNDERPINNING THE PROTECTION OF HUMAN RIGHTS DEFENDERS

7. **Recognition of the international dimension of the protection of human rights defenders:** Commitments undertaken in the field of the human dimension are matters of direct and legitimate concern to all OSCE participating States. While the responsibility for the protection of human rights defenders rests primarily with states, violations of the rights of human rights defenders are not solely a matter of their internal affairs. States should, therefore, recognize the need for protecting human rights defenders both on their territories and in other states. Thus, they should set up appropriate instruments and mechanisms that deal with the protection of human rights defenders domestically and abroad.

8. **Accountability of non-state actors:** While states have a duty to protect human rights defenders from abuses by non-state actors, the latter can play an important role towards the realization of the rights of human rights defenders. Non-state actors should respect and recognize the rights of human rights defenders and be guided by international human rights norms in carrying out their activities. Participating States should hold them accountable if they fail to do so in accordance with domestic legal procedures and standards.

9. **Equality and non-discrimination:** Human rights defenders shall not be discriminated against in the exercise of the full range of their human rights as a result of their work. The right to defend human rights must be guaranteed without discrimination, and measures to protect human rights defenders should be reflective of the specific needs of defenders facing multiple forms of discrimination. A

gender- and diversity-sensitive approach should be mainstreamed into all activities to strengthen the protection of human rights defenders.

10. **Conducive legal, administrative and institutional framework:** Domestic legal, administrative and institutional frameworks should contribute to creating and consolidating a safe and enabling environment, in which human rights defenders are protected, supported and empowered to carry out their legitimate activities. Domestic laws, regulations, policies and practices must be compatible with OSCE commitments and international human rights standards. They must be sufficiently precise to ensure legal certainty and prevent them from being arbitrarily applied. The institutional framework must guarantee the fundamental principle of fairness and due legal process.

11. **Legality, necessity and proportionality of limitations on fundamental rights in connection with human rights work:** International human rights instruments only allow for limitations on certain rights and only if limitations have a formal basis in law and are necessary in a democratic society in the interest of one of the prescribed grounds. Furthermore, they must be proportionate and compatible with other fundamental human rights principles, including the prohibition of discrimination. International human rights mechanisms have emphasized that the scope for permissible limitations must generally be interpreted narrowly. The fact that the right to defend human rights is instrumental for the achievement of all other rights further narrows the scope for permissible limitations. The threshold to meet the principles of necessity and proportionality of any such limitations can be considered particularly high.

II. PHYSICAL INTEGRITY, LIBERTY AND SECURITY AND DIGNITY OF HUMAN RIGHTS DEFENDERS

A. Protection from threats, attacks and other abuses

12. State institutions and officials must refrain from any acts of intimidation or reprisals by threats, damage and destruction of property, physical attacks, torture and other ill-treatment, killing, enforced disappearance or other physical or psychological harm targeting human rights defenders and their families. Participating States also have a duty to protect human rights defenders from such acts by non-state actors and to take steps to prevent abuses. Public authorities should publicly condemn such acts and apply a policy of zero tolerance.

Impunity and effective remedies

13. All allegations of such acts must be promptly, thoroughly and independently investigated in a transparent manner. The existence of independent and effective oversight mechanisms to investigate complaints about abuses by police and other state officials and their accessibility to human rights defenders are an essential

element in this regard. Individuals who bring complaints against police or other law enforcement officers must not face reprisals.

14. Authorities must not shield any unlawful actions of public officials or non-state actors directed against human rights defenders from prompt, thorough, independent and transparent investigation. Investigations must be capable of and effective in identifying the perpetrators and lead to their prosecution where necessary. Any sanctions should be commensurate with the gravity of the offence. Disciplinary proceedings are no substitute for criminal charges, nor are prosecutions for offences such as "abuse of office" sufficient in cases of violations of the right to life, of the prohibition of torture and other ill-treatment or other serious human rights violations.

15. States should consider adopting national legislation recognizing the motivation for crimes against human rights defenders on account of their human rights work as an aggravating factor in relation to sentencing.

16. States should ensure that their hate crime laws apply to crimes committed against human rights defenders "by association". A crime against a human rights defender should be similarly punished under relevant legislation if it is motivated by intolerance towards a specific social group the human rights defender does not directly belong to but is associated with.

17. States should guarantee full respect for the rule of law and the independence of the judiciary. Wherever necessary, they should carry out reforms to ensure that there is no impunity for abuses committed against human rights defenders, that legal remedies are available, accessible and fully effective and that victims or their families obtain adequate reparation.

18. Legal aid and other support should be provided to ensure that human rights defenders have effective access to justice.

Protection policies, programmes and mechanisms

19. States should develop, in consultation with civil society and with technical advice from relevant international agencies, appropriate protection policies, programmes and mechanisms to ensure the safety and security of human rights defenders at risk. These should include the provision of physical protection, temporary relocation and other protection measures and support services as may be required.

20. States should ensure that any protection programmes, policies and mechanisms have the capacity and means to provide gender-sensitive protection and support that meet the needs of women human rights defenders. Protection programmes, policies and mechanisms should also be reflective of and able to respond to the specific protection requirements of other particularly vulnerable categories of human rights defenders in accordance with the needs identified by affected individuals and groups. Human rights defenders should also be involved in developing

protection systems that take into account the risks for their family members and in determining concrete protection measures to mitigate such risks when required.

21. States should designate sufficient funds in their regular budget for the physical and psychological protection of human rights defenders at risk, emergency relief and other support services. They should also actively support non-governmental organizations (NGOs) that provide such services. If required, participating States should seek funds through international co-operation for this purpose.

22. Such measures should be accompanied by training and awareness-raising programmes targeted at relevant professional groups, as well as broader human rights education, in order to shape attitudes and behaviours and raise the profile of human rights defenders in society, and thereby increase their protection.

B. Protection from judicial harassment, criminalization, arbitrary arrest and detention

23. Human rights defenders must not be subjected to judicial harassment by unwarranted legal and administrative proceedings or any other forms of misuse of administrative and judicial authority, or to criminalization, arbitrary arrest and detention, as well as other sanctions for acts related to their human rights work. They must have access to effective remedies to challenge the lawfulness of detention or any other sanctions imposed on them.

Criminalization and arbitrary and abusive application of legislation

24. States should review the domestic legal framework relevant to human rights defenders and their activities for its compliance with international human rights standards. They should broadly and effectively consult with human rights defenders and seek international assistance in doing so. Any legal provisions that directly or indirectly lead to the criminalization of activities that are protected by international standards should be immediately amended or repealed.

25. Legal provisions with vague and ambiguous definitions, which lend themselves to broad interpretation and are or could be abused to prosecute human rights defenders for their work, should be amended or repealed. Full due process protections, in line with international fair trial standards, must be ensured.

26. Laws, administrative procedures and regulations must not be used to intimidate, harass, persecute or retaliate against human rights defenders. Sanctions for administrative or minor offences must always be proportionate and must be subject to the possibility of appeal to a competent and independent court or tribunal.

27. States should take steps, where required, to strengthen the independence of the judiciary and prosecution authorities, as well as the proper functioning of law enforcement bodies, to ensure that human rights defenders are not subjected to

politically-motivated investigations and prosecutions or to the otherwise abusive application of laws and regulations for their human rights work.

28. Effective oversight mechanisms should be put in place to investigate possible misconduct by law enforcement and judicial officials concerning the judicial harassment of human rights defenders. In addition, any structural shortcomings that may give rise to the abuse of power or corruption within the judiciary and law enforcement should be rigorously addressed.

29. Law enforcement officers, military personnel, public servants and other state employees who speak out against human rights violations or are engaged in other activities in defence of human rights should be protected from intimidation and harassment, disciplinary or other proceedings. In particular, the justice and discipline systems should not impose disproportionate limitations on members of the armed forces that would effectively deprive them of the right to defend human rights. Limitations on the rights of members of intelligence services and other security-sector officials have to meet the strict requirements of necessity and proportionality.

30. States should also protect, in law and practice, human rights defenders who are engaged in litigation from retaliatory charges, arbitrary prosecutions and other legal actions in response to cases that they file. Furthermore, their physical and personal integrity must be fully protected within and outside of the courtroom. Lawyers engaged in human rights work should not face intimidation or reprisals, such as the threat of disbarment, for their defence of human rights or of other human rights defenders.

Arbitrary detention and treatment in detention

31. States should not subject human rights defenders to arbitrary deprivation of liberty because of their engagement in human rights activity. Any form of deprivation of liberty must be based on and in accordance with procedures established by law, subject to the possibility for the detained to challenge the legality of detention before a competent court and otherwise comply with international human rights standards.

32. Human rights defenders arbitrarily detained should be immediately released. In this context, states should fully comply with decisions and opinions issued by international human rights mechanisms.

33. Human rights defenders should not be held in temporary or administrative detention for the purpose of intimidation or coercion or to prevent them from carrying out their human rights work.

34. Human rights defenders deprived of their liberty must always be treated with respect for and in accordance with international standards, without discrimination of any kind. Human rights defenders should not be singled out for selective

treatment to punish them for or discourage them from their human rights work. They should not be held in prolonged incommunicado detention. They should have access to a lawyer of their choice and be allowed to receive visits from their families. They should be provided with adequate food and health care while in detention. They should not be subjected to harsh prison conditions and should be absolutely protected from any form of torture and other cruel, inhuman or degrading treatment. Authorities have an obligation to exercise due diligence in protecting them from abuses by other detainees or inmates and to hold perpetrators of abuses, including potential instigators, to account. All allegations of torture and other ill-treatment must be promptly, independently and effectively investigated and referred to prosecution authorities.

35. Authorities should also take into account specific problems that women and other human rights defenders who are at particular risk may face in detention, protect them from gender-specific violations while in detention, including through the provision of gender-sensitivity training for police and law enforcement personnel, and provide appropriate services in accordance with relevant international standards.

Fair trial

36. Where criminal charges are brought against them, human rights defenders are entitled to a fair trial before a competent, independent and impartial tribunal. This includes that human rights defenders accused of a crime have access to legal representation provided by a lawyer of their choice, are not put under duress to extract a confession and that evidence, including witness statements, obtained through torture and other ill-treatment is excluded from legal proceedings. Assertions made against human rights defenders that are based on the misconduct of investigating or other officials should also not be used against them in the trial. Their lawyers must be effectively protected from pressure from any public official or non-state actor. Any form of pressure on the clients of human rights defenders or others to testify against them in court must also be prevented. Confidentiality of communication between the lawyer and the human rights defender facing trial must be fully guaranteed, while legal aid schemes should be available and accessible to human rights defenders to ensure that those who do not have the means to pay for it are appropriately represented when facing trial and to ensure equality of arms.

C. Confronting stigmatization and marginalization

37. State institutions and officials must refrain from engaging in smear campaigns, negative portrayals or the stigmatization of human rights defenders and their work. This includes the negative labelling of human rights defenders, discrediting human rights work and human rights defenders or defaming them in any way.

38. States should take proactive steps to counter smear campaigns against and the stigmatization of human rights defenders, including by third parties. They should publicly acknowledge the need to protect human rights defenders and the importance

of their work, give recognition to individual human rights defenders and thereby strengthen the legitimacy and status accorded to human rights work in society.

39. While fully respecting the right to freedom of opinion and expression, states should combat advocacy of hatred and other forms of intolerance against human rights defenders that constitutes incitement to discrimination, hostility or violence, including where this is conducted online. Governments and state institutions at all levels – national, regional and local – should publicly condemn any such manifestations or actual attacks against human rights defenders whenever they occur. Conduct that meets the threshold of constituting incitement to national, racial or religious hatred, as prescribed in international standards, must be prohibited by domestic law and sanctioned accordingly. These laws must be in full compliance with international human rights standards.

40. To avoid marginalization of human rights defenders, state institutions should actively and constructively engage with human rights defenders to empower their participation, including in public debates. State institutions should recognize the relevance and importance of their contributions, even if these are critical of the authorities or challenge them. Particular attention should also be given to strengthening the role of national human rights institutions (NHRIs) that are created and operate in conformity with the Paris Principles,[7] and appropriate mechanisms should be in place to ensure effective follow-up by the government to NHRI recommendations. Regular dialogue between human rights defenders and state institutions should be facilitated by applying appropriate consultative mechanisms. These mechanisms should also serve as a basis to develop joint actions, campaigns and human rights education programmes to raise awareness of human rights issues of concern and to encourage the use of complaints mechanisms and other means of enhancing accountability and addressing human rights abuses in the country.

III. A SAFE AND ENABLING ENVIRONMENT CONDUCIVE TO HUMAN RIGHTS WORK

41. States should respect, encourage and facilitate human rights activity. They should put in place practical measures aimed at creating safe and conducive environments that enable and empower human rights defenders to pursue their activities freely and without undue limitations, including work conducted individually and collectively with others, domestically and across borders. The full enjoyment of other rights and freedoms is instrumental to realizing the right to defend human rights.

7 See UN General Assembly Resolution 48/134, "National institutions for the promotion and protection of human rights", UN Doc. A/RES/48/134, adopted on 20 December 1993.

D. Freedom of opinion and expression and of information

42. States should review legislation concerning freedom of opinion and expression and should repeal or amend any provisions that do not comply with relevant international human rights standards. These include provisions that impose undue restrictions for reasons of national security, public order and public health or morals beyond what is permissible under international standards. Laws or regulations that impose specific limitations on the exercise of the right to freedom of opinion and expression by certain groups or professions, such as members of the armed forces or public servants, should also be reviewed to ensure their full compliance with international standards, i.e., that they fully meet the strict requirements of necessity and proportionality.

43. States should eliminate any vaguely-worded provisions in anti-terrorism or other national security legislation that may be open to arbitrary application in order to threaten, silence or imprison human rights defenders. They should also eliminate legislation that, for example, effectively prohibit advocacy against discrimination and intolerance; criminalize criticism of or disrespect for the government and public officials, as well as disrespect for state institutions or symbols; and other legal provisions that do not meet the strict requirement of necessity and proportionality under international law. They should respect that dissenting views may be expressed peacefully.

44. Similarly, criminal defamation laws should be repealed. Defamation and similar offences – including those committed online – should be dealt with exclusively under civil law. Criminal liability, including prison sentences, should be excluded for offences regarding the reputation of others such as libel and defamation. Civil laws regulating speech offences should not provide for disproportionate financial penalties or other undue requirements that would lead to self-censorship, endanger the functioning of or lead to the bankruptcy of an individual or media outlet.

Access to information of public interest and whistleblowers

45. States should not impose undue limitations on the dissemination of information that in practice prevent human rights defenders from carrying out their work or providing services to their beneficiaries.

46. Furthermore, states should adopt and implement freedom of information legislation that provides for effective and equal access to official documents, including by human rights defenders. They should also take proactive measures to ensure that the general public is aware of the existence of such legislation, its entitlement to access official documents and the specific procedures to request access.

47. Laws, regulations and practices concerning state secrecy should be reviewed and, where necessary, amended, so as to ensure that they do not unduly restrict access to information of public interest, including information relevant to past and present human rights abuses and crimes.

48. States should recognize the importance of whistleblowers who act in the public interest to uncover human rights abuses and corruption in both the public and the private sector. They should adopt legislation and practices that afford whistleblowers protection and provide a safe alternative to silence. In legal proceedings against whistleblowers, the public interest in the information that has been disclosed should be given appropriate weight. In particular, whistleblowers should be effectively protected from prosecution and punishment for disclosing state secrets when uncovering information about the responsibility of state agents or non-state actors for serious human rights abuses, which must not be protected as state secrets.

49. Freedom of opinion and expression applies online. Generally, states should promote and facilitate equal access to the Internet and digital information technologies. All state regulation of Internet communication must fully comply with the strict requirements that international standards set for limitations to the right to freedom of opinion and expression. It is inconsistent with these standards to censor online content and block or filter websites, foreign news and information or other services solely because they contain information that is critical of the government or discuss issues that are controversial in society.

50. States should ensure that Internet service providers and other private companies that are subject to their jurisdiction but operate internationally do not facilitate such undue restrictions to online content on their territory or in other states. Bloggers and users of social media should be protected from repercussions for posting content and comments that are critical of their government.

Freedom of the media

51. The media environment – including the printed media, radio, television and the Internet – should be conducive to the participation of human rights defenders in public debates in order to help develop new ideas towards improving the protection of human rights and meeting new human rights challenges. States should therefore take measures to create a strong and pluralistic media and to improve the access of human rights defenders to the media.

52. States should review their media laws, policies and practices and should guarantee that these laws are conducive to an independent, pluralistic and human rights-friendly media environment, in which knowledge of and respect for human rights is promoted more generally. Measures to strengthen the independence of the media should be accompanied by the independent training of journalists and media workers, including human rights education, as part of their professional training.

53. States have an obligation to refrain from direct or indirect censorship, and should not exert formal or informal control over the media system in order to prevent or punish criticism of the government, reporting on human rights violations, mismanagement and corruption or discussion of issues that are controversial in society and

that may challenge traditional values or the views of the authorities. They should ensure that neither public institutions and officials nor private media corporations and vested business interests inhibit the exercise of the right to freedom of opinion and expression, including the right to seek, receive and impart information.

54. Journalists who promote human rights are human rights defenders, regardless of their accreditation status and the media through which they work (print, radio, television or the Internet). Journalists who report on human rights violations, corruption or mismanagement or on the work of whistleblowers should not face prosecution, arbitrary legal actions or other repercussions for doing so. Authorities should acknowledge the importance of independent and investigative journalism in uncovering abuses and misuse of power, and they should support it in order to enhance accountability. They should ensure that journalists are not subjected to arbitrary criminal prosecutions and have access to legal aid and other means of support to enable them to carry out their work without interference and fear of reprisals. In particular, they should take steps to ensure the safety of journalists and ensure that journalist human rights defenders are effectively protected from attacks and other abuses both by state and non-state actors. Any crime committed against human rights defenders, including against journalists defending human rights, must be promptly, effectively and independently investigated in a transparent manner, and those responsible must be brought to justice.

E. Freedom of peaceful assembly

55. Legislation on freedom of peaceful assembly and related practices must be in full conformity with international human rights standards. Limitations on the right to freedom of assembly can only be imposed if they are based in law and necessary in a democratic society in the interest of one of the specific grounds set out in international human rights standards. In addition, limitations on the right to freedom of peaceful assembly must be proportionate. Authorities involved in drafting or reviewing relevant legislation, as well as those involved in implementing it (including national, regional and local authorities, law enforcement and the judiciary), are encouraged to apply the OSCE/ODIHR-Venice Commission *Guidelines on Freedom of Peaceful Assembly*.

56. Human rights defenders should not face any limitations on their right to freedom of assembly beyond those that are permissible under relevant international standards. Content-based restrictions imposed only because they convey messages that are critical of the authorities or perceived to be controversial in society are incompatible with these standards. An outright ban of an assembly can be permissible only in very exceptional circumstances as prescribed by international human rights standards.

57. Human rights defenders organizing assemblies should only be required to give prior notification of the assembly where this is necessary to enable the authorities to make arrangements in order to facilitate the assembly and to protect public order,

public safety and the rights and freedoms of others. Wherever legitimate restrictions are imposed concerning the time, place and manner of a peaceful assembly, human rights defenders holding an assembly must be provided with reasonable alternatives that ensure that the assembly can be held within "sight and sound" of the target audience. States should ensure that appropriate and effective procedures are in place to review complaints about the imposition of undue restrictions. Authorities should also refrain from obstructing participation in assemblies and imposing unreasonable requirements on the organizers of assemblies that would discourage them from holding assemblies.

58. Spontaneous assemblies should be facilitated, in line with the presumption in favour of holding assemblies, even where no advance notification was given. Human rights defenders participating in non-notified assemblies should not be arrested, detained or fined solely for their participation in such an assembly. Fines or other sanctions for failing to comply with formal legal requirements for assemblies should be proportionate to the gravity of the offence; legislation that allows for disproportionate penalties should be repealed. Under no circumstances should organizers of peaceful assemblies be held liable for unlawful acts by individual participants if they make reasonable efforts to avert them. States should ensure that all those charged with administrative or other offences in connection with the exercise of their right to freedom of assembly enjoy full due process protections.

59. In policing assemblies, law enforcement officers must strictly refrain from using force against human rights defenders who exercise their right to peaceful assembly. Particular attention should be given to specific needs – for example, in terms of risk assessment, the composition of police units or their prior training and instruction – when policing assemblies of certain groups of human rights defenders who are at particular risk. If assemblies turn violent, the police have a duty to use force only where strictly necessary and only to the extent required by the exigencies of the situation. They must refrain from using disproportionate force and indiscriminate force that fail to distinguish between violent and peaceful demonstrators, journalists reporting from the event, monitors or bystanders. Any misconduct and excessive use of force by law enforcement officers must be promptly, effectively and independently investigated and appropriate action must be taken to bring those responsible to justice. Law enforcement officers must be regularly and sufficiently trained to ensure their compliance with human rights principles in policing assemblies. States should involve human rights defenders in devising and implementing such trainings.

60. Furthermore, states have a positive obligation to protect human rights defenders from any acts by third parties that aim to obstruct them in exercising their right to peaceful assembly, without discrimination. This includes physical protection before, during and after the assembly if those organizing or participating in it face threats of violent attacks. This is particularly relevant for assemblies on issues that are perceived to challenge traditional values or aim to counter extremist political

views, such as demonstrations to counter racism, xenophobia, intolerance or discrimination.

61. Authorities should engage effectively with organizers of assemblies in identifying protection needs and appropriate measures to address them. They should consult closely with organizers prior, during and after the event about security and public safety measures for the event, as well as the policing operation itself, with a view to ensuring that human rights defenders can exercise their right to freedom of assembly freely, without undue interference and in a safe environment.

62. Authorities should also support and facilitate initiatives by human rights defenders for the independent monitoring of and reporting on assemblies, as these measures can contribute to greater accountability and improve the protection of the right to freedom of peaceful assembly. Human rights defenders and their organizations play a crucial watchdog role in any democracy and must, therefore, be permitted to freely observe public assemblies. Similarly, independent coverage by the media can increase public accountability for both organizers of assemblies and law-enforcement officials. The ability of independent media to access and report on assemblies should, therefore, not be inhibited but, rather, protected and facilitated by the authorities.

F. Freedom of association and the right to form, join and participate effectively in NGOs

63. Everyone should be able to freely exercise the right to form, join and participate in groups or associations for the defence of human rights without discrimination of any kind, including on the basis of the nature of the rights defended. Any limitations on the exercise of the right to freedom of association must have a clear legal basis and must fully comply with the strict requirements prescribed by international human rights standards. Any limitations imposed must be necessary in a democratic society in the interests of one of the specific grounds set out in international human rights standards. Any such limitations must be proportionate.

64. States should review all legislation relevant to the right to freedom of association and to form, join and participate effectively in NGOs in order to ensure its consistency, coherence and compliance with relevant international human rights standards. States should consult with civil society when discussing amendments to such laws, and are encouraged to seek international assistance in carrying out such legislative reviews.

Laws, administrative procedures and requirements governing the operation of NGOs

65. Human rights defenders should be able to form groups or associations without an obligation to register or obtain legal personality in order to pursue their activities. The exercise of the right to freedom of association is not contingent on registration, and human rights defenders must not be criminalized for not registering a group or association. Any offences related to activity on behalf of an unregistered organization, including in relation to funding, should be promptly removed from legislation.

66. Formal registration and procedures to acquire legal personality should be available as an option to empower human rights defenders in carrying out their work in association with others, for example, for the purpose of accessing benefits or other support that may only be available to legal persons. In general, the legislative and administrative framework should be designed to assist human rights defenders in creating organizations or groups and not to stigmatize them for their legitimate activities.

67. Laws and administrative procedures for NGOs to register officially or to obtain legal personality – if they so wish – should be clear and simple and not discriminatory. They should not impose undue and burdensome requirements on the organizations that may obstruct their work or unduly distract resources from their human rights activities. Any administrative and financial reporting requirements must be reasonable and provided for in law. Any inspections of NGO offices and financial records must have a clear legal basis and be fair and transparent. Audits should be specifically regulated by legislation. Such legislation should clearly define in an exhaustive list the grounds for possible inspections and the documents that need to be produced during the inspection. Furthermore, it should provide for a clearly defined and reasonable period of prior warning and maximum duration of inspections.

68. In overseeing compliance with reasonable requirements, authorities shall respect the independence and autonomous decision-making capacity of NGOs. They must not interfere with their internal affairs, management, planning and implementation of activities. They should respect the confidentiality of their internal matters and refrain from interfering by surveillance, infiltration or other means. The oversight and audit of NGOs should not be invasive, intrusive or paralyzing.

69. Where reasonable requirements for the registration or operation of NGOs are not met, the oversight or registration bodies should always give adequate warning so that corrections can be made. Members of human rights organizations must not be punished for non-compliance with unreasonable administrative or other requirements. Sanctions for the failure to comply with legitimate administrative requirements should be proportionate.

Access to funding and resources

70. States should assist and facilitate NGO efforts to seek and obtain funds for human rights work while not interfering with their independence. They should, to the extent possible, make funds available to support independent NGOs. They should also take appropriate steps to encourage donations by private individuals or business corporations for human rights work, including by offering tax benefits for donations. In their human rights and development policies, states should ensure that funding for NGOs is accessible without discrimination and prejudice to the activity of the organization, its geographical focus and the location of the human rights activity.

71. States should also, where required, assist and facilitate NGO efforts to obtain other material resources needed to carry out independent human rights work. They shall refrain from any arbitrary or unlawful acts that deprive NGOs of these resources, including by confiscating, damaging or destroying equipment or other property. They should also ensure that all public authorities and officials refrain from applying pressure on private actors in order to obstruct NGOs in their efforts to procure material resources.

72. Furthermore, all public authorities and officials should fully respect the independence of NGOs and refrain from using government funding or other financial or non-financial means to influence the work of NGOs and the broader human rights movement. State funding schemes should be transparent, fair and accessible on an equal basis to all human rights defenders and their NGOs.

73. States should not place undue restrictions on NGOs to seek, receive and use funds in pursuit of their human rights work. Domestic laws must not criminalize or delegitimize activities in defence of human rights on account of the origin of funding. States should guarantee that NGOs operating on their territory – whether registered or not – can seek and receive funding from abroad without undue restrictions and requirements. States should refrain from invoking efforts to eradicate money laundering and terrorism financing as pretexts for imposing discriminatory restrictions on NGO access to funding or monitoring of their transactions. Governmental authorization prior to seeking, receiving or using funds – whether from within or outside the country – should not be required.

G. The right to participate in public affairs

74. States should set up appropriate mechanisms and procedures for the participation of human rights defenders and their organizations both domestically and internationally. These should not be limited to one-off or ad-hoc consultations, but should provide for regular, ongoing, institutionalized and open dialogue to facilitate effective participation in public decision-making, including in policy and law-making and prior to drafting legislation.

75. Participation mechanisms and procedures should be inclusive, reflective of the diversity of human rights defenders and should take account of the situation of those with specific needs or from marginalized groups, to ensure their participation on an equal basis.

H. Freedom of movement and human rights work within and across borders

76. States should recognize the importance of human rights work within and across borders and should fully comply with their commitments and relevant international standards concerning freedom of movement, including when human rights defenders leave or enter a country and when they move within their own country or seek to do so for the purpose of human rights work.

77. Everyone has the right to leave any country, including their own. Any restrictions on this right must be prescribed by law, necessary to achieve a legitimate aim as set out in relevant international human rights standards and proportionate to that aim. Furthermore, no one shall be arbitrarily deprived of the right to return to their own country.

78. Travel bans on human rights defenders that prevent them from leaving the country and are imposed solely for reasons related to their human rights work are inconsistent with international standards. Other measures which in practice have the same effect are similarly incompatible. Human rights defenders who are denied the right to leave their country because their name appears on a list of individuals not permitted to leave the country should have the right to know about and challenge such lists and have their names promptly removed from them if there is no lawful justification for their appearance on such lists.

79. Everyone lawfully within the territory of a state has the right to freedom of movement within that territory. Human rights defenders must not face any restrictions to that right beyond what is permissible under relevant international human rights standards. The state should effectively ensure freedom of movement of human rights defenders across its territory, including to remote regions, as required to effectively pursue their human rights activities. This should include, wherever possible, access to autonomous regions and disputed territories for the purpose of human rights monitoring and reporting, as well as other human rights activities. States should also facilitate access to relevant sites, such as places where assemblies or protests are held and places where people are deprived of their liberty, for the purpose of human rights monitoring and reporting.

80. In recognition of the importance of freedom of movement and contacts among people in the context of the protection and promotion of human rights and fundamental freedoms, states should also aim at facilitating visits by NGOs from other states for the purpose of participating in meetings, advocacy and other human rights activities.

81. Visa regimes and procedures should not impose undue obstacles for human rights defenders to travel to another state for the purpose of their human rights work and should be simplified as much as possible. States should consider practical measures to ensure that past arbitrary convictions, charges and arrests resulting from human rights work do not lead to denials of or undue delays in the visa applications of human rights defenders. Furthermore, visa applications must be considered duly and without discrimination on any ground such as race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth, age or other status.

82. Human rights defenders who are denied entry into a country because they have been included on a national list that prohibits entry to one or a group of states should be entitled to know about and appeal such prohibitions and entry bans before the relevant authorities and courts.

83. States should support, including through their diplomatic missions, human rights defenders who face imminent risks to their lives and well-being by temporarily moving them to a safe environment when required and, if necessary, by issuing emergency visas. In line with their obligations under international law, states should also grant human rights defenders longer-term international protection in the event that they have to flee their country for fear of persecution on account of their human rights work. They must fully comply with their obligation under international law not to return persons to countries where they face a real risk of being subjected to violations of their right to life, to be free from torture and other ill-treatment or other serious human rights violations.

84. Human rights defenders travelling to another state should not be subjected to border checks that are disproportionate or constitute a violation of their human rights. Similarly, they should not be subjected to searches at the border, including body searches that are disproportionate, fail to respect their dignity or are otherwise arbitrary. Furthermore, when crossing borders, human rights defenders should not face arbitrary confiscation of equipment, including IT equipment, private data or information materials such as publications, leaflets and hand-outs, necessary for carrying out their human rights activities.

I. Right to private life

85. States have a duty to refrain from any unlawful or arbitrary interference with the privacy, family life, home or correspondence of human rights defenders, including with their electronic communications, and to protect them from such interference by others through legislative and other measures. Any interference with privacy, family, home or correspondence must be provided for by law, necessary to achieve a legitimate aim in accordance with international human rights standards and proportionate to that aim.

86. States should also take steps towards ensuring and set out clearly the expectation that private companies that are subject to their jurisdiction but operate internationally do not facilitate such undue interferences in other states by providing software, surveillance technology and services used to target human rights defenders for their work. They should also support efforts by human rights defenders in building their knowledge and capacity to enhance the safety of their electronic communications.

87. Information or data obtained through unlawful or arbitrary interferences with a human rights defender's private life should be inadmissible in any legal proceedings against her or him. Authorities have an obligation to ensure that any information or data obtained – even if obtained legally – is not shared with anyone who is not authorized by law to receive, process and use it. In particular, effective measures have to be taken to ensure that such information or data is not made available to and used by mass media or others in order to publicly discredit human rights defenders. If obtained legally, such data and information must be stored only as long as strictly necessary, and then must be destroyed.

88. States should acknowledge that human rights defenders have a special need for protection from undue interference in their private life due to the nature of their work. States should also recognize that the confidentiality of human rights defenders' sources and the identity of their clients need to be respected in order for them to carry out their human rights work effectively. It is particularly important for human rights defenders working with individuals who are at high risk of physical and other attacks that the identity of sources and clients is adequately protected. This is to ensure that these individuals feel sufficiently safe to provide information or seek assistance.

89. States should also recognize the specific protection needs that certain groups of human rights defenders, including in particular women human rights defenders, have in relation to matters concerning their private life.

J. Right to access and communicate with international bodies

90. States shall ensure that human rights defenders enjoy the right to unhindered access to and communication with international bodies, including international and regional bodies with the competence to receive and consider information concerning allegations of human rights abuses. States must protect human rights defenders, their families and associates from any form of reprisals for co-operating, having co-operated or seeking to co-operate with international institutions. All allegations of such reprisals – whether committed by public officials or other actors – must be promptly, thoroughly and independently investigated, and there must be no impunity for such acts. Victims and their families must have access to effective remedies and should obtain adequate reparation.

91. States should also refrain from any other action, including legislative measures, that may frustrate or undermine the right of human rights defenders to provide information, submit cases or participate in meetings with international bodies, including: OSCE institutions; the United Nations and its representatives and mechanisms in the field of human rights; the institutions of the Council of Europe and the Inter-American Commission on Human Rights (IACHR); international courts and tribunals; and any other human rights mechanisms at the international and regional level. States must refrain from actions that might prevent human rights defenders from travelling abroad to attend formal and informal meetings with international bodies. Moreover, they should not prevent human rights defenders from meeting with international delegations when these visit the country.

92. States should take proactive steps to facilitate communication between human rights defenders and international bodies with a view to improving the protection of human rights in the country. They should, for example, actively disseminate information in the country's local languages about international human rights mechanisms, related human rights instruments, recommendations, decisions and jurisprudence. They should consult with human rights defenders when drafting periodic reports to human rights monitoring bodies and other mechanisms and should actively consult with them in ensuring adequate follow-up. They should accept visit requests from the UN, its representatives and mechanisms in the field of human rights, including the UN Special Rapporteur on the situation of human rights defenders. Furthermore, they should facilitate in good faith the conduct of such visits, as well as those by regional institutions, including of the Council of Europe and the IACHR, and provide space for human rights defenders to hold private meetings and confidentially share information with these bodies and institutions in the course of their visits. Furthermore, states should welcome ODIHR and other OSCE institutions to conduct visits and other monitoring activities.

IV. FRAMEWORK FOR IMPLEMENTATION OF THE GUIDELINES

National implementation

93. To ensure the protection of human rights defenders, participating States are encouraged to carry out – in consultation with civil society – a baseline review of laws and practices affecting human rights defenders. They should repeal or amend any laws and regulations that impede or hinder the work of human rights defenders and adjust their practices accordingly.

94. Participating States should strengthen the role of independent NHRIs and their mandate in accordance with the Paris Principles, and should consider granting them the competence to receive individual complaints if not yet done so. Where this is not yet the case, states should specifically mandate and resource NHRIs to systematically and impartially monitor and regularly report on the situation of human rights defenders, and to support them in obtaining redress for violations they experience as a result of their work. They should not in any way restrict the

right of human rights defenders to access, communicate or otherwise engage with NHRIs. States should recognize that members and staff of independent NHRIs must be fully protected, as all other human rights defenders, from undue pressure and abuse.

95. Where required, states should consider setting up or designating inter-institutional co-ordinating bodies, with the participation of human rights defenders, to develop and implement strategies to enhance the protection of human rights defenders and to create and consolidate a safe and enabling environment. Whether or not an inter-institutional co-ordinating body is required is best ascertained in consultation with human rights defenders. Such bodies should also be tasked with drawing up and administering appropriate protection programmes, policies and mechanisms in order to increase the physical safety and security of human rights defenders at risk.

96. Participating States are encouraged to translate the present Guidelines in local languages and, together with other relevant international standards, disseminate them widely among law enforcement agencies, the judiciary, the military, faith leaders, teachers and educators, health workers, journalists and other professional groups, civil society and other relevant actors. They should encourage non-state actors – including private businesses, political and social groups – to be guided by the Guidelines in carrying out their activities. Furthermore, they should co-operate with ODIHR in promoting awareness about the Guidelines and in training relevant public officials, professional groups and other actors to ensure appropriate follow-up and implementation.

Protection of human rights defenders in other OSCE participating States and third countries

97. Participating States should consider setting up mechanisms and draw up national guidelines to support human rights defenders and their work in other OSCE participating States, as well as in other countries outside the OSCE region. Such national guidelines should include rapid response mechanisms for human rights defenders at imminent risk in other OSCE participating States and third countries.

98. Through their diplomatic missions, participating States should take action in the state concerned to support human rights defenders, in particular those at immediate risk of or subject to attacks, harassment, persecution and arbitrary detention. They should promote action by members of the diplomatic corps, for example, to meet with human rights defenders, visit those in detention, attend their trials and issue public statements or intervention letters to the authorities of the host state when required.

99. Participating States should also raise instances of threats, attacks, arbitrary arrests and other serious human rights violations against human rights defenders through other appropriate means with the state concerned, for example, in

high-level meetings between governments, at international forums or by calling, when required, the accredited diplomatic representative of the state concerned to a meeting.

100. Whenever required, participating States should – through their diplomatic missions in the state concerned or otherwise – facilitate the issuance of emergency visas and relocation support for individual human rights defenders to allow them to promptly leave the country where they are at risk. Effective protection measures should take into account the risks that family members of the human rights defenders are exposed to and should be extended to them if required. If relocated to another country, effective protection should also be provided to the family members of the human rights defender concerned.

International co-operation and human rights mechanisms

101. Participating States should co-operate within the OSCE and other international forums to develop and strengthen international and regional standards and mechanisms for the protection of human rights defenders, including by providing relevant international institutions and mechanisms with sufficient resources and other political support. In doing so, they should ensure consistency and coherence in their interaction with different international organizations and human rights mechanisms at different levels.

102. Participating States should, in good faith, engage in peer review at the international level with a view to identifying protection gaps, shortcomings in national law and practices, as well as possible improvements that can be made to strengthen the protection of human rights defenders. They should draw on good practices from other states in that respect.

103. Participating States should co-operate with OSCE institutions and international human rights mechanisms, including the United Nations, its representatives and mechanisms in the field of human rights, as well as the institutions of the Council of Europe and the Organization of American States. They should do so, *inter alia*, by providing, in good faith, all information requested by such institutions and mechanisms and by responding to their communications without undue delay. Furthermore, they should ensure appropriate follow-up towards implementing without delay all recommendations by OSCE institutions and international human rights mechanisms and should fully comply with the judgements of international and regional courts.

104. To enable ODIHR to provide, in accordance with its mandate, information on relevant implementation issues, including to the OSCE Permanent Council, as well as supporting material for the annual review of implementation, participating States are encouraged to supply information to ODIHR about the steps taken to implement the OSCE/ODIHR *Guidelines on the Protection of Human Rights Defenders*. In accordance with their commitment to co-operate with OSCE institutions, including in

the continuous review of implementation, participating States should seek assistance from ODIHR, whenever required, with a view to ensuring full compliance with their human dimension commitments relevant to the protection of human rights defenders. They should welcome and facilitate ODIHR activities and other forms of assistance on their territory, and should actively support the Office in discharging its mandate.

OSCE

105. The OSCE executive structures, institutions and field presences should contribute to the full realization of the rights and principles set out in the OSCE/ODIHR Guidelines, within their respective mandates.

SECTION B
Explanatory Report

"The participating States recognize the universal significance of human rights and fundamental freedoms (...)".

"They confirm the right of the individual to know and act upon his rights and duties in this field."

Final Act of the Conference on Security and Co-operation in Europe (Helsinki 1975) (Questions Relating to Security in Europe: 1. (a) Declaration on Principles Guiding Relations between Participating States – Principle VII).

"(11) The participating States further affirm that, where violations of human rights and fundamental freedoms are alleged to have occurred, the effective remedies available include (...) the right of the individual to seek and receive assistance from others in defending human rights and fundamental freedoms, and to assist others in defending human rights and fundamental freedoms".

Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen 1990).

"18. The participating States emphasize (...) the need for protection of human rights defenders and look forward to the completion and adoption, in the framework of the United Nations, of the draft declaration on the 'Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms'."

Budapest Document: Towards a Genuine Partnership in a New Era (Summit of Heads of State or Government) (Budapest 1994) (Decisions: VIII. The Human Dimension).

The right to defend human rights is a universally recognized right

1. The right to defend human rights, as set out in the UN Declaration on Human Rights Defenders,[8] is firmly based on and derives from fundamental human rights set forth in binding OSCE commitments, international human rights treaties and other instruments.

2. In the 1975 Helsinki Final Act, participating States committed to respect human rights and fundamental freedoms, and to promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and

8 "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms" (hereafter referred to as "UN Declaration on Human Rights Defenders"), adopted unanimously by UN General Assembly Resolution A/RES/53/144 on 9 December 1998.

freedoms. Furthermore, they committed to fulfilling their obligations as set forth in the international declarations and agreements in this field, including, inter alia, the International Covenants on Human Rights, which comprises the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).[9]

3. The present Guidelines do not set new standards for a specific group of individuals but, rather, reaffirm the rights set out in international human rights instruments and OSCE commitments, which are instrumental for the exercise of the right to defend human rights. They aim at providing guidance on measures that participating States can take to ensure compliance with their obligation to respect, protect and fulfil the rights that human rights defenders are entitled to, and to ensure that human rights defenders can freely exercise their right to defend human rights.

Who is a human rights defender?

4. Article 1 of the UN Declaration on Human Rights Defenders reaffirms that "[e]veryone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels". Moreover, both the UN General Assembly and the Human Rights Council have reaffirmed the important role of human rights defenders at the local, national, regional and international levels.[10]

5. In accordance with the UN Declaration on Human Rights Defenders, the term "human rights defender" is understood to include anyone who, individually or with others, acts to promote or protect human rights, regardless of their profession or other status.

6. The key characteristic that defines human rights defenders is not who they are but what they do and the principles they stand for. Some human rights defenders work for the protection of all human rights; others work on specific human rights issues or the human rights of a particular group, for example, women's rights, the rights of persons belonging to national or ethnic, religious and linguistic minorities, the

9 See Conference on Security and Co-operation in Europe, Helsinki 1975, "Questions Relating to Security in Europe, 1.(a) Declaration on Principles Guiding Relations between Participating States", principle VII. All OSCE participating States, except the Holy See, have ratified the ICCPR and almost all of them – apart from Andorra, the Holy See and the USA – also the ICESCR. In addition, all participating States are parties to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Most of them have also ratified several of the other international core human rights treaties, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD). Furthermore, the 47 participating States that are also members of the Council of Europe are also bound by the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Participating States that are signatories to the American Convention on Human Rights (ACHR) are obliged to refrain from acts which would defeat the object and purpose of the treaty.

10 See UNGA Resolution, "Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: protecting women human rights defenders", UN Doc. A/RES/68/181, adopted on 18 December 2013, preambular para. 6; and UN Human Rights Council Resolution, "Protecting human rights defenders", UN Doc. A/HRC/RES/22/6, adopted on 21 March 2013, preambular para. 8.

rights of persons with disabilities, the rights of military and law enforcement personnel, as well as particular human rights problems in the field of civil and political, economic, social and cultural rights. Some focus their work on the development and observance of the international normative framework for the protection of human rights; others provide services to victims or seek to empower individuals to claim their rights. Some engage more in advocacy and public campaigning; others in monitoring, reporting and uncovering abuses. Many human rights defenders work across borders, some of them with the aim of enhancing the protection of human rights worldwide, while others focus on a particular country or region.[11]

7. Anyone promoting and striving for the realization of human rights is a human rights defender – regardless of profession, age or other status or whether they are carrying out their human rights activities individually or jointly with others, as part of an informal group or a non-governmental organization (NGO), or whether they act in a voluntary capacity or professionally. Lawyers, trade unionists, staff of national human rights institutions (NHRIs), journalists, medical professionals, public servants and students, among others, can be human rights defenders.

8. The only requirement is that human rights defenders conduct their activities by peaceful means and that they recognize, in accordance with the Universal Declaration of Human Rights (UDHR), the universality of all human rights for all, "without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."[12]

9. OSCE participating States have confirmed the rights of everyone to know and act upon their rights and duties, as well as the positive role that organizations and people can play in achieving the respect of peace, justice and well-being necessary to ensure the development of friendly relations and co-operation between participating States.[13] They have also committed to recognizing as NGOs "those which declare themselves as such."[14]

10. When developing national policies or strategies for the protection of human rights defenders, participating States should apply a broad definition of the term "human rights defender" based on the UN Declaration.

11 For a more detailed overview of the range of typical activities and a description of the term "human rights defender", see "Human Rights Defenders: Protecting the Right to Defend Human Rights", Office of the High Commissioner for Human Rights (OHRCR), Fact Sheet No. 29, April 2004, <http://www.ohchr.org/Documents/Publications/FactSheet29en.pdf>.

12 The Universal Declaration of Human Rights (UDHR), Article 2, <http://www.un.org/en/documents/udhr/index.shtml>.

13 Helsinki 1975.

14 Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow 1991, para. 43.

Human rights defenders play a vital role in a democratic society

11. OSCE participating States have reaffirmed that respect for human rights and fundamental freedoms, democracy and the rule of law is at the core of the OSCE's comprehensive concept of security, and have also committed themselves to counter threats to security such as violations of human rights and fundamental freedoms.[15]

12. The important work of those striving for the promotion and protection of human rights has been recognized in a number of international forums. With the adoption by consensus of the UN Declaration on Human Rights Defenders in 1998, UN member states formally acknowledged the "valuable work of individuals, groups and associations in contributing to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals".[16] In a resolution adopted in March 2013, the UN Human Rights Council urged states to acknowledge publicly the important and legitimate role of human rights defenders and that dissenting views may be expressed peacefully.[17] Furthermore, the Human Rights Council stressed "that respect and support for the activities of human rights defenders, including women human rights defenders, is essential to the overall enjoyment of human rights."[18] On a number of occasions, OSCE participating States have recognized that individuals, groups and organizations have an essential role to play in efforts aimed at enhancing the promotion and protection of human rights.[19]

13. In spite of the above, as consistently noted in the reports of the UN Special Rapporteur on the situation of human rights defenders, defending human rights remains a dangerous activity.[20]

Need for protection of human rights defenders

14. In its Resolution adopted in December 2013, the UN General Assembly (UNGA) reiterated its deep concern that in many countries persons and organizations engaged in promoting and defending human rights and fundamental freedoms frequently face threats and harassment and suffer insecurity as a result of those

15 Istanbul Document, "Charter for European Security", Istanbul 1999, para. 19.

16 UN Declaration on Human Rights Defenders, p. 2.

17 UN Human Rights Council Resolution A/HRC/RES/22/6, 21 March 2013, paras. 5 and 11 (i).

18 *Ibid.*, preamble, p. 2. See also see preambular paras. 8 and 9 stressing the important role of human rights defenders in UN General Assembly Resolution 66/164, UN Doc. A/RES/66/164, adopted on 11 December 2011, p. 2.

19 See, for example, the preamble to Moscow 1991, and the Astana Commemorative Declaration, Astana 2010, para. 6.

20 See, for example, the report of the UN Special Rapporteur on the situation of human rights defenders to the UN Human Rights Council, UN Doc. A/HRC/25/55, 23 December 2013, paras. 57 and 128.

activities.[21] Indeed, OSCE participating States recognized the need to protect human rights defenders already in 1994.[22]

15. Due to the risks they face as a result of their work, human rights defenders require specific and enhanced protection at the local, national and international levels. As a first step towards strengthening the protection of human rights defenders, OSCE participating States should publicly acknowledge the important role of human rights defenders, the legitimacy of their activities and the existence of these risks.

16. Certain groups of human rights defenders are exposed to heightened risks, for example, due to the specific issues they are working on, the context in which they operate or because they belong to or are associated through their work with socially excluded and marginalized groups. Depending on the human rights situation and specific circumstances in a given country, specific groups of human rights defenders who are at heightened risk may include, but are not limited to, the following:

    - Women human rights defenders, i.e., women of all ages who engage in the defence of human rights and all people who engage in the defence of the rights of women and gender equality[23] including those working on, for example, gender-based violence and maternal health, among other issues;

    - Human rights defenders belonging to or defending the rights of persons belonging to national or ethnic, religious and linguistic minorities – including Roma and Sinti, Travellers, people of African descent, refugees and migrants, among others – or indigenous people;

    - Human rights defenders with disabilities, including mental disabilities, and those defending the rights of persons with disabilities;

    - LGBTI people who are human rights defenders and all those working against discrimination and violence based on sexual orientation, gender identity, gender expression and intersex status;

    - Human rights defenders who are members of particular professional groups such as law enforcement officers, military personnel, judges and lawyers, government officials, civil servants and other state employees, human rights Ombudspersons and staff of NHRIs, journalists and other media workers;

    - Whistleblowers who disclose information about human rights abuses, as well as those who receive, possess or disseminate such information;

21 See the preamble to the UNGA Resolution on women human rights defenders, UN Doc. A/RES/68/181, adopted on 18 December 2013. See also UNGA Resolution 66/164, preambular para. 3.

22 Budapest 1994.

23 The term "women human rights defender" is used here as it has been set out in the UNGA Resolution of December 2013, which includes both human rights defenders who are women and all those, irrespective of their gender, who defend women's rights and gender equality. See UNGA Resolution 68/181, preambular para. 6.

- Human rights defenders working on specific human rights issues in the field of civil and political rights, including in electoral contexts, on the protection of fundamental freedoms such as the rights to freedom of opinion and expression, assembly and association, the right to form, join and participate in trade unions, religious freedom and conscientious objection from military service, as well as those working against militarism and promoting peace and security;

- Human rights defenders working on economic, social and cultural rights, health, environmental or land issues and corporate accountability, and those defending the rights of socially-excluded and marginalized people – including the poor or homeless, drug users and people with HIV/AIDS – and of people facing exploitation, including children and trafficked people;

- Human rights defenders operating in rural or remote areas, contested or unrecognized territories and in ongoing or post-conflict situations, as well as those working on human rights in humanitarian crises or emergencies and in electoral contexts.

17. Participating States should acknowledge that, depending on the specific circumstances in their countries, certain groups of human rights defenders are at particular risk. As such, states should take account of the specific needs of these groups in terms of any measures aimed at ensuring their protection and the promotion of their work.

Nature of state obligations

18. In line with their OSCE commitments, the international human rights treaties that they have ratified and other duties under international law, states have both positive and negative obligations, namely the obligation to respect human rights, as well as the obligation to protect and to fulfil those rights.

19. Concerning positive and negative obligations under the ICCPR, the UN Human Rights Committee has stated that the ICCPR requires that states refrain from violations of the rights recognized in the Covenant, but also that they take appropriate measures and exercise due diligence to prevent, punish, investigate or redress harm caused by acts of private persons or other entities. Furthermore, they are required to adopt legislative, judicial, administrative, educative and other appropriate measures in order to fulfil their legal obligations under the ICCPR.[24]

20. The obligation to respect, protect and fulfil human rights also applies to the rights of those who defend human rights. This means that states have not only to refrain from acts that would violate the rights of human rights defenders, but that they have to take appropriate steps towards protecting human rights defenders, as well as reactive and preventive measures towards creating a safe and enabling environment in which human rights defenders can conduct their human rights activities

24 UN Human Rights Committee, General Comment No. 31, "The Nature of the General Legal Obligation Imposed on States Parties to the Covenant", UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, paras. 6-8.

freely and without fear of reprisals or other harm. Furthermore, they should take proactive educative steps to promote a human rights culture in their societies so that it is considered normal for individuals and groups to stand up for human rights in their interactions with authorities and with fellow citizens.

21. The obligation to respect, protect and fulfil human rights and, more specifically, the rights of human rights defenders (including the right to defend human rights as such) applies to states in their entirety. As the UN Human Rights Committee, for example, stated: "the obligations of the Covenant [...] are binding on every State Party as a whole. All branches of government (executive, legislative and judicial), and other governmental authorities, at whatever level – national, regional or local – are in a position to engage the responsibility of the State Party." From this it follows that all branches of the government at all levels have responsibilities with regard to the rights of human rights defenders, and that the state is not relieved from responsibility if, for example, the executive claims that violations result from actions by another branch of government or by municipal authorities.[25] Furthermore, the state may be responsible for wrongful acts under international law against human rights defenders committed by individuals or groups that have no formal status as state official or organ, if these individuals or groups act as de facto state organs. This is, for example, the case when such individuals or groups act under specific instructions or subsequent public approval dispensed by the state (for the responsibility of the state concerning the prevention and punishment of abuses by non-state actors see below).[26]

25 See *Ibid.* paras. 6-8. It should also be noted in this context that, in accordance with the Human Rights Committee's interpretation of states' obligations under the ICCPR, the obligations of states as set out here also apply extraterritorially, for example, in relation to the forces of a State acting outside its territory. See General Comment No. 31, para. 10.

26 See *The Prosecutor v. Duško Tadic*, "Judgement of the Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991", the International Criminal Tribunal for the former Yugoslavia, Case No.: IT-94-1-A, 15 July 1999. As far as structured and hierarchically organized military groups are concerned, the state is responsible for acts committed by the group if it is acting under the "overall control" of the state, meaning that the state "has a role in organising, coordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support to that group. Acts performed by the group or members thereof may be regarded as acts of de facto State organs regardless of any specific instruction by the controlling State concerning the commission of each of those acts." See *ibid.* para. 137.

A safe and enabling environment to empower human rights work

22. The UN Human Rights Council has urged states "to create a safe and enabling environment in which human rights defenders can operate free from hindrance and insecurity (…)."[27] In turn, OSCE participating States have committed to "promote conditions throughout its region in which all can fully enjoy their human rights and fundamental freedoms under the protection of effective democratic institutions, due judicial process and the rule of law. This includes secure environments and institutions for peaceful debate and expression of interests by all individuals and groups of society."[28]

23. According to the UN Special Rapporteur on the situation of human rights defenders, a safe and enabling environment includes the following: a conducive legal, institutional and administrative framework; access to justice and an end to impunity for violations against defenders; a strong and independent national human rights institution; policies and programmes with specific attention to women defenders; effective protection policies and mechanisms with specific attention to groups at risk; non-state actors that respect and support the work of human rights defenders; safe and open access to international human rights bodies; and a strong, dynamic and diverse community of defenders.[29]

24. Such an environment, therefore, requires the effective protection of the physical and psychological integrity, liberty and security and dignity of human rights defenders, as well as the realization of a variety of other fundamental human rights that are instrumental for the full enjoyment of the right to defend human rights.

25. Although both areas are intrinsically intertwined, the Guidelines focus separately on the security and safety of human rights defenders, and thereafter on other elements of a safe and enabling environment.

27 See UN Human Rights Council Resolution A/HRC/RES/22/6, para. 2. Similarly, the Council of Europe Committee of Ministers has called on Council of Europe member states to "create an environment conducive to the work of human rights defenders, enabling individuals, groups and associations to freely carry out activities, (…) to promote and strive for the protection of human rights and fundamental freedoms (…)", see "Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities", Adopted by the Committee of Ministers on 6 February 2008, para. 2, <https://wcd.coe.int/ViewDoc.jsp?id=1245887&Site=CM>.

28 See Document of the Eleventh Meeting of the Ministerial Council, "OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century", Maastricht 2003, para. 36.

29 Report of the Special Rapporteur on the situation of human rights defenders, A/HRC/25/55, 23 December 2013, para. 61.

I. GENERAL PRINCIPLES UNDERPINNING THE PROTECTION OF HUMAN RIGHTS DEFENDERS

Recognition of the international dimension of the protection of human rights defenders

26. Participating States have repeatedly emphasized "that issues relating to human rights, fundamental freedoms, democracy and the rule of law are of international concern, as respect for these rights and freedoms constitutes one of the foundations of the international order."[30] More specifically, they "categorically and irrevocably declare[d] that the commitments undertaken in the field of the human dimension of the CSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned."[31]

27. Similarly, the Human Rights Committee argued that, regarding state obligations under the ICCPR, "every State Party has a legal interest in the performance by every other State Party of its obligations. This follows from the fact that the "rules concerning the basic rights of the human person" are *erga omnes* obligations and that, as indicated in the fourth preambular paragraph of the Covenant, there is a United Nations Charter obligation to promote universal respect for, and observance of, human rights and fundamental freedoms."[32]

28. Moreover, all participating States should co-operate with each other in good faith in resolving any safety threats or other issues that negatively affect the enjoyment of the right to defend human rights in their countries. They should not view it as an unfriendly act if another participating State shows an interest in the situation of human rights defenders in their country. In the spirit of the OSCE commitments and in recognition of the fact that human rights work often extends across borders, participating States should also facilitate human rights work that concerns their countries and that is being carried out by human rights defenders from other countries.[33]

30 Moscow 1991, preamble.

31 *Ibid*. See also: Lisbon Document, Summit of Heads of State or Government, "Declaration on a Common and Comprehensive Security Model for Europe for the Twenty-First Century", Lisbon, 1996, para. 5; Charter for European Security, "Our Common Foundations", Istanbul 1999, para. 7; Astana 2010, paras. 3 and 6.

32 See UN Human Rights Committee General Comment No.31, CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 2.

33 For example, in the Moscow document, participating States also committed to "endeavour to facilitate visits to their countries by NGOs from within any of the participating States in order to observe human dimension conditions". See Moscow 1991, para. 43.4.

Accountability of non-state actors

29. While there are various competing definitions of what entities classify as non-state actors, for the purpose of the present Guidelines a broad definition of the term is used. It covers private individuals and all other actors other than states, regardless of their status or any official affiliation with a state. Non-state actors therefore include political or social groups, faith leaders and institutions (including those afforded a special status in a state), media corporations, businesses (including multinational corporations and large-scale industries such as agricultural or extractive industries), privately-contracted security services, as well as armed groups and criminal organizations, among others.

30. In terms of the relationship of non-state actors to the work of human rights defenders, the UN Human Rights Council has invited "leaders in all sectors of society and respective communities, including political, social and faith leaders, and leaders in business and media, to express public support for the important role of human rights defenders and the legitimacy of their work."[34]

31. As regards businesses, the Guiding Principles on Business and Human Rights, which have been endorsed by the UN Human Rights Council, emphasize that business enterprises should respect human rights, i.e., that they should avoid infringing human rights and should address adverse human rights impacts created by business activities in which they engage. To that end, as recommended in the Guiding Principles, business enterprises should – as appropriate to their size and circumstances – adopt policy commitments, together with human rights due-diligence processes, to identify, prevent, mitigate and account for how they address their impacts on human rights, as well as processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.[35] Business corporations should be encouraged to pay particular attention to the impact of their operations on the situation of human rights defenders. In conducting an

34 A/HRC/RES/22/6, para. 18.

35 See Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework", UN Doc. A/HRC/17/31, 23 March 2011, principle 15. The Guiding Principles were endorsed by the UN Human Rights Council, see Resolution A/HRC/17/31, 16 June 2011, para. 1. On this issue, see also: the report of the Special Rapporteur on the situation of human rights defenders on large-scale development projects, UN Doc. A/68/262, 5 August 2013; and the reports of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises, for example, UN Doc. A/HRC/23/32, 14 March 2013, in which the Working Group remarked that "the role of civil society organizations and human rights defenders in raising awareness of the grave negative human rights impact of some business activities, as well as the harassment, persecution and reprisals faced by human rights defenders and civil society organizations that try to address such forms of impact and ensure access to remedies for victims" (para. 49), and expressed its concern about reports "of grave allegations of harassment, persecution and reprisals faced by victims and human rights defenders when seeking judicial remedy" (para. 47).

impact assessment they should involve human rights defenders and other potentially affected groups and stakeholders through meaningful consultations.[36]

32. While non-state actors can play an important role in ensuring that human rights defenders enjoy greater protection, including by supporting and promoting their activities, the prime responsibility and duty to promote and protect human rights, including those of human rights defenders, rests with the state.[37] As such, states have an obligation to protect human rights defenders from abuses by non-state actors, including by taking effective legislative and other measures to prevent, investigate, punish and redress such abuses.

33. In accordance with the Guiding Principles on Business and Human Rights, states should clearly set out the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.[38] The same can be said for other private actors, including political, social and religious groups or institutions and the media. As such, participating States should refrain from colluding with or contracting services by private individuals or other non-state actors who commit abuses against human rights defenders and should hold them to account. This is particularly pertinent when functions that traditionally pertain to state authorities are outsourced to private actors such as military and security companies and other groups. Where existing legislation, policies and practices are not sufficient to hold non-state actors to account, states should amend them or adopt new legislation and practices to that end.

Equality and non-discrimination

34. Article 26 of the ICCPR stipulates: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Furthermore, Article 2 of the ICCPR requires

36 The Special Representative of the UN Secretary General on business and human rights has also recommended that business enterprises, in their due diligence efforts, should consult with "credible, independent resources including human rights defenders"; see "Guiding Principles on Business and Human Rights", commentary to principle 18.

37 See UN Declaration on Human Rights Defenders, preambular para. 7. See also the Council of Europe's "Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities", adopted on 6 February 2008, preambular para. 9; and the UNGA Resolution A/RES/66/164, preambular para. 15.

38 "Guiding Principles on Business and Human Rights", principle 2. Concerning the actions of private companies abroad more specifically, the UN Human Rights Committee recalled this principle, for example, in its Concluding Observations on Germany, and encouraged the state party to set out clearly this expectation and also to take appropriate measures to strengthen the remedies provided to protect people who have been victims of activities of German business enterprises operating abroad. See "Concluding Observations on Germany", UN Doc. CCPR/C/DEU/CO/6, 12 November 2012, para. 16. In the commentary to principle 26 about state-based judicial mechanisms when addressing business-related human rights abuses, the Guiding Principles recommend states specifically to ensure "that the legitimate and peaceful activities of human rights defenders should not be obstructed".

States Parties to the treaty "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Similarly, Article 2 of the ICESCR guarantees the economic, social and cultural rights enshrined in that Covenant to everyone without such distinctions. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) affords protection against racial discrimination, which is understood as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."[39]

35. Provisions that prohibit discrimination are also firmly enshrined in regional human rights treaties, including Articles 1 and 24 of the ACHR,[40] Article 14 of the ECHR and Protocol 12 to the ECHR,[41] Article 4 of the Council of Europe Framework Convention for the Protection of National Minorities (FCNM) and other standards, such as the European Union (EU) Racial Equality Directive.[42]

36. As the UN Human Rights Committee has stressed, "[n]on-discrimination, together with equality before the law and equal protection of the law without discrimination, constitutes a basic and general principle relating to the protection of human rights",[43] and, therefore, relating to the protection of human rights defenders. In accordance with Article 26 of the ICCPR, equality before the law and equal protection of the law imply that laws, as well as practices arising from laws, must not have a discriminatory impact; as such, both direct and indirect discrimination are prohibited. Indirect discrimination occurs, for example, when a seemingly non-discriminatory provision in law affects certain groups disproportionately. As set out by the Human Rights Committee, the right to equality before the law and

39 Article 1, ICERD.

40 Article 1 of the ACHR affords protection of all Convention rights without distinction and, in addition, Article 24 provides for the overall right to equal protection before the law.

41 The prohibition of discrimination contained in Article 14 of the ECHR is of a limited nature, and only applies to the rights guaranteed by the Convention. However, Protocol 12 to the ECHR contains a general prohibition of discrimination.

42 Council Directive 2000/43/EC, 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>.

43 UN Human Rights Committee, "General Comment No. 18: Non-discrimination", 10 November 1989, para. 1. Based on the definition of "discrimination against women" contained in Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the term "discrimination" should be understood, in the view of the Human Rights Committee, to imply any distinction, exclusion, restriction or preference which is based on any ground as set out in Articles 2 and 26 of the ICCPR, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms. See *ibid.* para. 7.

freedom from discrimination also requires states to counteract discrimination by both public and private actors and bodies in all fields.[44]

37. OSCE participating States have committed themselves to ensure that individuals who exercise, express the intention to exercise or seek to exercise their human rights and fundamental freedoms, as well as members of their families, are not discriminated against in any manner as a consequence of doing so.[45] Accordingly, individuals exercising these rights and freedoms in order to promote and strive for the protection and realization of human rights must not be discriminated against as a consequence of their activities.

38. Human rights defenders must be protected from discrimination in the exercise of the full range of their rights, including their civil, political, economic, social, cultural and other rights and freedoms, all of which are "of paramount importance and must be fully realized by all appropriate means."[46] This also includes access on an equal basis to public services, such as health care, housing, education or employment. Discrimination in granting access to such services is often used as a tool to silence human rights defenders or inhibit human rights work. Participating States should ensure that human rights defenders and members of their families have access to public services on an equal basis with others, and should protect them from any form of discrimination as a result of their human rights work or the human rights activities of their relatives.

39. Furthermore, individuals should not be discriminated against on any of the grounds set out above in the exercise of their rights and freedoms, including where such discrimination prevents them from freely exercising their right to defend human rights on an equal basis with others, for example, by imposing discriminatory restrictions on the right to freedom of opinion and expression, assembly and association on certain groups such as persons belonging to national or ethnic, religious and linguistic minorities or other groups.

40. In accordance with the prohibition of discrimination, states shall ensure that everyone on their territory and subject to their jurisdiction enjoys human rights and fundamental freedoms,[47] regardless of their nationality or condition of statelessness, including asylum seekers, refugees, migrant workers and others.[48] The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities states that "[p]ersons belonging to minorities may exercise their rights (…) individually as well as in community with other members of

44 UN Human Rights Committee General Comment No. 28, Article 3, "The Equality of Rights Between Men and Women", UN Doc. CCPR/C/21/Rev.1/Add.10, 29 March 2000, para. 31.

45 Concluding Document of the Vienna Meeting – Third Follow-up Meeting to the Helsinki Conference, Vienna 1989, "Questions Relating to Security in Europe: Principles", para. 13.8.

46 Vienna 1989, para. 12.

47 Vienna 1989.

48 See UN Human Rights Committee, General Comment No. 31, para. 10.

their group, without any discrimination."[49] Similarly, the UN Convention on the Rights of Persons with Disabilities emphasizes the need to "promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities".[50] According to Article 3 of the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), "States Parties shall take (…) all appropriate measures (…) to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men."[51]

41. As regards the ICCPR, the Human Rights Committee has interpreted the non-discrimination provisions in Articles 2 and 26 of the Covenant to include discrimination on the basis of sexual orientation as part of the reference to "sex" as a prohibited ground of discrimination.[52] Recommendation CM/Rec(2010)5 of the Council of Europe Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity sets out concrete steps towards that end.[53]

42. As such, participating States should take measures to facilitate the enjoyment of the right to defend human rights by everyone on an equal basis. In doing so, they may, and in some cases have a duty to, treat people differently where their

49 Article 3.

50 Article 1.

51 CEDAW, Article 3.

52 UN Human Rights Committee Views, *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992, para. 8.7. Article 13 of the Amsterdam Treaty also provides for the European Union to "undertake necessary actions to fight discrimination based on sexual orientation", and Article 21(2) of the EU Charter of Fundamental Rights prohibits "any discrimination on any ground", including on the basis of sexual orientation. Similarly the European Court of Human Rights held in *Salgueiro da Silva Mouta v. Portugal* (Application no. 33290/96, 21 December 1999) that the protection against discrimination afforded by Article 14 of the ECHR also covers discrimination based on sexual orientation, noting that the list of grounds for discrimination in Article 14 of the ECHR was illustrative and not exhaustive, as is shown by the words "any ground such as". Furthermore, according to the Explanatory Report to Protocol 12 to the ECHR, which complements Article 14 with a general prohibition of discrimination, the Protocol also protects against discrimination based on sexual orientation, <http://www.conventions.coe.int/Treaty/en/Reports/Html/177.htm>, para. 20. In addition, the *Yogyakarta Principles* further emphasized that "[e]veryone is entitled to enjoy all human rights without discrimination on the basis of sexual orientation or gender identity." While the Principles are not a binding OSCE consensus document, they were developed and adopted by a group of international human rights experts, including eight UN Special Rapporteurs of the Human Rights Council, and thus provide useful guidance. See Yogyakarta Principles, "Principles on the application of international human rights law in relation to sexual orientation and gender identity", principle 2.

53 Recommendation CM/Rec(2010)5, Adopted by the Council of Europe Committee of Ministers on 31 March 2010, <http://www.coe.int/t/dghl/standardsetting/hrpolicy/Publications/LGBT_en.pdf>.

situations are significantly different.[54] As the UN Human Rights Committee has stated, the principle of equality sometimes requires states to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination.[55] The ICERD also expressly permits special measures for the purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection.[56] Similarly, the FCNM requires State Parties to that treaty to adopt, where necessary, adequate measures in order to promote the effective equality of persons belonging to national minorities in all areas of economic, social, political and cultural life, and that such measures shall not be considered to be an act of discrimination.[57]

43. Action to protect human rights defenders should be underpinned by comprehensive anti-discrimination laws and policies that offer effective legal and other protection against discrimination, including to those who experience multiple or intersectional discrimination.[58] Measures to strengthen the protection of human rights defenders and create a safe and enabling environment should be reflective of the specific needs of human rights defenders who face discrimination.

44. In particular, every activity to strengthen the protection of human rights defenders should be examined for the different impact it may have depending on gender, and for its unintended impact in reinforcing stereotypes and patterns of exclusion. Accordingly, the UNGA has expressed particular concern regarding "systemic and structural discrimination and violence faced by women human rights defenders of all ages", and has called on states to "take all measures necessary to ensure their protection and to integrate a gender perspective into their efforts to create a safe and enabling environment for the defence of human rights".[59]

54 See the judgement of the ECtHR in *Thlimmenos v. Greece* (2000), para. 44, which states: "The Court has so far considered that the right under Article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification [...] However, the Court considers that this is not the only facet of the prohibition of discrimination in Article 14. The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different."

55 UN Human Rights Committee General Comment No. 18, 1989, para. 10.

56 Article 1(4) ICERD.

57 Article 4 FCNM.

58 The Explanatory Memorandum to Recommendation CM/Rec(2010)5 explains the terms as follows: "Multiple discrimination can be said to occur when a person suffers discrimination based on his or her connection to at least two different protected discrimination grounds, or because of the specific combination of at least two such grounds. The latter situation is often also referred to as intersectional discrimination. An example of that is when a lesbian woman is treated less favourably than a heterosexual woman would be but also less favourably than a gay man."

59 UNGA Resolution 68/181, December 2013, para. 5.

Conducive legal, administrative and institutional framework

45. Participating States have a positive obligation to adopt legislative, administrative and other appropriate measures to create and consolidate a safe and enabling environment that empowers human rights defenders to exercise freely their right to defend human rights. In accordance with Article 3 of the UN Declaration on Human Rights Defenders, domestic law provides the juridical framework for implementation of all human rights and fundamental freedoms, including the right to defend human rights. As such, it must be consistent with the international obligations of the state in the field of human rights.[60] Furthermore, it should be well crafted through a broad and inclusive consultative process.

46. In particular, as the UN Human Rights Council has stressed, states should "ensure that all legal provisions and their application affecting human rights defenders are clearly defined, determinable and non-retroactive in order to avoid potential abuse".[61] In a recent report to the Human Rights Council, the UN Special Rapporteur on the situation of human rights defenders expressed regret that legislation is used in a number of countries to restrain the activities of human rights defenders and criminalize them, in breach of international human rights law and standards (for further details see the section on Protection from judicial harassment, criminalization and arbitrary arrest and detention below).[62]

47. Therefore, participating States should review, in consultation with civil society and with technical advice from relevant international agencies, all legislation relevant to the exercise of the right to defend human rights, and should amend or repeal any laws that are not in conformity with international standards. In doing so, they should be guided by and implement the opinions of international institutions such as the European Commission for Democracy through Law (the Venice Commission of the Council of Europe), the OSCE/ODIHR and the OSCE Representative on Freedom of the Media. They should also review relevant policies, practices and the functioning of the overall administrative and institutional framework, and take appropriate measures to eliminate any impediments to the exercise of the right to defend human rights.

60 Article 3 of the UN Declaration reads: "Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted." See also para. 3 of the UN Human Rights Council Resolution A/HRC/RES/22/6, which stressed "that legislation affecting the activities of human rights defenders and its application must be consistent with international human rights law, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and guided by the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and, in this regard, condemns the imposition of any limitations on the work and activities of human rights defenders enforced in contravention of international human rights law".

61 A/HRC/RES/22/6, para. 11.

62 See the report of the UN Special Rapporteur on the situation of human rights defenders, A/HRC/25/55, 23 December 2013, para. 64.

48. The UN Human Rights Council has underlined the value of NHRIs, established and operating in accordance with the Paris Principles, in this context, namely with respect to the work of NHRIs in continuously monitoring existing legislation and informing the state of its impact on the activities of human rights defenders, including by making relevant and concrete recommendations.[63]

49. Furthermore, participating States should ensure that public officials, including law enforcement officers, the judiciary and other officials receive training on the states' obligations to respect, protect and fulfil the rights of human rights defenders, including the right to defend human rights.[64]

50. The UN Human Rights Committee has noted that states should adopt educative and other measures to raise awareness about the Covenant not only among public officials, but also among society at large.[65] Participating States should also adopt such measures with regard to other international standards concerning the protection of the rights of human rights defenders, including the present Guidelines.[66]

Legality, necessity and proportionality of limitations of fundamental rights in connection with human rights work

51. International human rights standards allow for the imposition of restrictions or limitations on certain rights within strictly defined parameters. These rights include the rights to freedom of opinion and expression, assembly and association (Articles 19, 21 and 22 of the ICCPR; Articles 10 and 11 of the ECHR; and Articles 13, 15 and 16 of the ACHR); freedom of movement (Article 12 ICCPR, Article 2 of Protocol No. 4 to the ECHR; and Article 22 of the ACHR); and the right to respect

63 Para. 16. See also para. 2 of the "Declaration of Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities", which recommends giving NHRIs or strengthening their competence to receive, consider and make recommendations for the resolution of complaints by human rights defenders about violations of their rights. The Principles relating to the Status of National Institutions or so called "Paris Principles" were adopted by UNGA Resolution 48/134 of 20 December 1993. The Paris Principles set out standards concerning the role, composition, status and functions of national human rights institutions and guarantees for their independence. The International Coordinating Committee for National Human Rights Institutions (ICC), established in 1993 to promote and strengthens NHRIs, reviews and accredits national human rights institutions in compliance with Paris Principles. The Principles are available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>.

64 See UN Human Rights Council Resolution A/HRC/RES/22/6, para. 12.

65 UN Human Rights Committee, General Comment No. 31, "The Nature of the General Legal Obligation Imposed on States Parties to the Covenant", UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 7. Concerning the importance of measures to promote supportive and enabling environments for the prevention of human rights violations, including human rights education and training and other measures, see also the UN Human Rights Council Resolution on the role of prevention in the promotion and protection of human rights, A/HRC/RES/24/16, adopted on 27 September 2013, para. 3.

66 See also Article 14 of the UN Declaration on Human Rights Defenders, which stresses that states have "the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights". According to Article 15 "[t]he State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme."

for private and family life (Article 8 ECHR).[67] In no way should rights and fundamental principles that are qualified as absolute be restricted.

52. Article 17 of the UN Declaration on Human Rights Defenders provides that "[i]n the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

53. Any restrictions on the rights that allow for the imposition of such limitations must strictly meet all of the following requirements:

   a) They must be prescribed by law;

   b) They must pursue a legitimate aim in conformity with the specific permissible grounds of limitations set out in the relevant international standards; and

   c) They must be necessary in a democratic society and proportionate to the aim pursued.[68]

54. The conditions for any limitation on the exercise of the rights that allow for the imposition of such limitations are cumulative;[69] in other words, they have to strictly meet all of the requirements concerning legality, permissible grounds, necessity and proportionality. States should always be guided by the principle that

67 Concerning the right to private and family life, the corresponding provision in the ICCPR (Article 17 ICCPR), does not contain a separate limitation clause, since it provides protection against *arbitrary or unlawful* interference with one's privacy, family, home or correspondence, as well as unlawful attacks on one's honour and reputation. As set out in the Human Rights Committee's General Comment on Article 17, the term "unlawful" means that no interference can take place except in cases envisaged by the law, which itself must comply with the provisions, aims and objectives of the Covenant. As regards the term "arbitrary interference", the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances (see UN Human Rights Committee General Comment No.16, adopted on 23 March 1988, paras. 4 and 5). In other words, the requirements the Human Rights Committee applies to the right to private life concerning the permissibility of interferences are similar to those concerning permissible limitations to Articles 19, 21 and 22 of the ICCPR. See also the section on the *Right to private life* below. Article 11 of the ACHR is worded in a similar way as Article 17 of the ICCPR and also does not, therefore, contain a separate limitation clause.

68 See, for example, UN Human Rights Committee, General comment No. 34, Article 19, "Freedoms of opinion and expression", 12 September 2011, UN Doc. CCPR/C/GC/34, para. 22, concerning the requirements for limitations to freedom of expression in accordance with Article 19(3) of the ICCPR. In line with relevant international human rights standards UN Human Rights Council Resolution 22/6 calls upon States to ensure that "[a]ny provision or decision that may interfere with the enjoyment of human rights respects the fundamental principles enshrined in international law so that they are lawful, proportionate, non-discriminatory and necessary in a democratic society" (para. 11(d)).

69 See "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association", UN Doc. A/HRC/23/39, 23 April 2013, para. 19.

the limitations must not impair the essence of the right.[70] The UN Human Rights Committee has noted that the relationship between a right and a restriction and between a norm and an exception must not be reversed.[71] Freedom is the rule and limitation the exception.[72]

55. The requirement that they must be prescribed by law entails that limitations have a formal legal basis and that the law is clear, unambiguous and precisely worded to enable individuals to regulate their conduct accordingly. Furthermore, the law must be accessible to the public and it must not confer unfettered discretion for the limitation on those charged with its execution.[73] The law must be in line with international human rights standards.

56. The ICCPR enumerates as permissible grounds for limitations those that are imposed in the interest of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. In relation to the right to freedom of expression, the UN Human Rights Committee has noted that "[r]estrictions are not allowed on grounds not specified in paragraph 3, even if such grounds would justify restrictions to other rights protected in the Covenant. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated."[74] Similar grounds for permissible limitations are listed in the ECHR for certain rights. In all provisions related to these rights, the list of permissible grounds for limitations is exhaustive. The legitimate grounds as prescribed in international standards must not be supplemented by additional grounds in domestic legislation. Article 18 of the ECHR (Limitation on use of restrictions on rights) stipulates that "restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed." Article 30 of the ACHR contains a comparable provision that limits the scope of restrictions.

57. The principle of "necessity" implies that there is a "pressing social need" for the interference and that the restriction falls within the limits of what is acceptable in a democratic society.[75] The European Court of Human Rights (ECtHR) sees "pluralism, tolerance and broadmindedness" as elements without which there can be

70 UN Human Rights Committee General Comment No. 27, Article 12, "Freedom of Movement", UN Doc. CCPR/C/21/Rev.1/Add.9, 2 November 1999, para. 13.

71 *Ibid.*

72 See also report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/20/27, para. 16.

73 See UN Human Rights Committee General Comment No. 34, Article 19, "Freedoms of opinion and expression", UN Doc. CCPR/C/GC/34, 12 September 2011, para. 25.

74 UN Human Rights Committee, General Comment No. 34, para. 22.

75 According to the European Court of Human Rights, "the adjective 'necessary', within the meaning of Article 10 § 2, implies the existence of a 'pressing social need'." See, for example, *Steel and Morris v. the United Kingdom*, Application no. 68416/01, 15 February 2005.

no democratic society.[76] As the Special Rapporteur on the rights to freedom of assembly and of association pointed out, limitations must not, therefore, harm the principles of pluralism, tolerance and broadmindedness.[77]

58. In order to be proportionate, limitations must not be overbroad, and the least intrusive means of achieving the legitimate objective should always be given preference. The UN Human Rights Committee has emphasized that "[r]estrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected."[78] Furthermore, the Committee has stated that "[t]he principle of proportionality has to be respected not only in the law that frames the restrictions, but also by the administrative and judicial authorities in applying the law."[79]

59. Furthermore, laws that impose limitations must be compatible with other fundamental human rights norms, such as the prohibition of discrimination.[80] For example, as regards limitations on the ground of public morals, the UN Human Rights Committee has stated that "the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations … for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition".[81] The Committee added that "[a]ny such limitations must be understood in the light of universality of human rights and the principle of non-discrimination".[82]

60. Similarly, the UN Human Rights Council has called upon States to ensure that "[l]egislation aimed at preserving public morals is compatible with international human rights law", and that "legislation designed to guarantee public safety and public order contains clearly defined provisions consistent with international human rights law, including the principle of non-discrimination, and that such legislation is not used to impede or restrict the exercise of any human right, including freedom of expression, association and peaceful assembly, which are essential for the promotion and protection of other rights".[83]

76 *Ibid.*

77 See UN Doc. A/HRC/C/20/27, paras. 17 and 81.

78 UN Human Rights Committee General Comment No. 27 on Article 12, para. 14.

79 *Ibid.*, para. 15.

80 See Human Rights Committee General Comment No. 34 para. 26, which states: "Laws restricting the rights enumerated in article 19, para. 2 […] must not only comply with the strict requirements of article 19, para. 3 of the Covenant but must also themselves be compatible with the provisions, aims and objectives of the Covenant. Laws must not violate the non-discrimination provisions of the Covenant. Laws must not provide for penalties that are incompatible with the Covenant, such as corporal punishment."

81 *Ibid.* and General Comment No. 22 on Article 18 of the ICCPR, UN Doc. CCPR/C/21/Rev.1/Add.4, 27 September 1993, para. 8.

82 Human Rights Committee General Comment No.34 on Article 9, para. 32.

83 See Human Rights Council Resolution A/HRC/RES/22/6, paras. 4 and 11(g).

61. In its jurisprudence regarding the right to freedom of opinion and expression, the UN Human Rights Committee has observed that the value placed by the Covenant upon uninhibited expression in a democratic society is particularly high in the context of public debate concerning figures in the public and political domain.[84] This is due to the fact that "freedoms of information and of expression are cornerstones in any free and democratic society. It is the essence of such societies that its citizens must be allowed to inform themselves about alternatives to the political system/ parties in power, and that they may criticise or openly and publicly evaluate their Governments without fear of interference or punishment".[85]

62. The same can be said about other rights which are instrumental for the realization of human rights. Therefore, the threshold to meet the principles of necessity and proportionality can be considered to be particularly high where limitations concern the exercise of rights in connection with human rights work.

II. PHYSICAL INTEGRITY, LIBERTY AND SECURITY AND DIGNITY OF HUMAN RIGHTS DEFENDERS

A. Protection from threats, attacks and other abuses

63. In accordance with Article 12(3) of the UN Declaration on Human Rights Defenders, the "[s]tate shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration."

64. Articles 6 and 7 of the ICCPR, Articles 2 and 3 of the ECHR and Articles 4 and 5 of the ACHR require states to protect anyone within its territory and under its jurisdiction – including human rights defenders – from violations of their right to life and the absolute prohibition of torture and other ill-treatment. OSCE participating States have stressed "that everyone has the right to life [...] and no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment".[86] In addition, they have reaffirmed their determination to implement fully their common OSCE commitments to eradicate torture and other cruel, inhuman or degrading treatment or punishment; to intensify their efforts to take persistent,

84 See Human Rights Committee Views in *Bodrozic v. Serbia and Montenegro,* Communication No. 1180/2003, October 2005.

85 *Ibid.* footnote 8 with reference to the Views in, *inter alia, Aduayom et al. v. Togo,* Communications No. 422-424/1990, 12 July 1996.

86 See Document of the Sixteenth Meeting of the Ministerial Council, Ministerial Declaration on the Occasion of the 60th Anniversary of the Universal Declaration of Human Rights (Helsinki 2008).

determined and effective measures to prevent and combat torture and other ill-treatment; and to ensure the full rehabilitation of torture victims.[87]

65. Nevertheless, human rights defenders in several participating States continue to face threats and acts of violence as a result of their work, including killings and acts of torture and other ill-treatment. The Council of Europe Committee of Ministers has deplored the fact "that human rights defenders, including journalists, are all too often victims of violations of their rights, threats and attacks, despite efforts at both national and international levels".[88] The UN Human Rights Council and the General Assembly have both expressed their grave concern "with regards to the serious nature of risks faced by human rights defenders due to threats, attacks and acts of intimidation against them."[89] UN Treaty Bodies have also expressed their concern at reports of threats, assaults and other acts of violence, sometimes including murder, against human rights defenders in a number of OSCE participating States.[90] The Parliamentary Assembly of the Council of Europe (PACE) has deplored the fact that some of the most serious attacks on human rights defenders in some countries, including murders, abductions and torture, have still not been

87 See Document of the Seventeenth Meeting of the Ministerial Council, "Ministerial Declaration on the Occasion of the 25th Anniversary of the Adoption of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (Athens 2009), paras. 8 and 9. For earlier OSCE commitments concerning the prohibition of torture and other ill-treatment, see also Vienna 1989, para. 23.4; Copenhagen 1990, para. 16.1; Charter of Paris for a New Europe (Paris 1990); Budapest 1994, para. 20; Istanbul 1999, "Charter for European Security: III. Our Common Response", para. 24; and the Document of the Thirteenth Meeting of the Ministerial Council (Ljubljana 2005), Decision No. 12/05 on Upholding Human Rights and the Rule of Law in Criminal Justice Systems.

88 See the preamble to the "Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities", adopted on 6 February 2008.

89 See the preambles to UN Human Rights Council Resolution 22/6, UN Doc. A/HRC/RES/22/6, adopted on 21 March 2013 and UNGA Resolution 66/164, UN Doc. A/RES/66/164, adopted on 19 December 2011. Concerning threats and attacks against women human rights defenders in particular, see also UNGA Resolution 68/181, UN Doc. A/RES/68/181, adopted on 18 December 2013.

90 See, for example, "Concluding Observations of the UN Human Rights Committee on Ukraine", UN Doc. CCPR/C/UKR/CO/7, 22 August 2013, para. 20; "Concluding Observations of the UN Human Rights Committee on Serbia", UN Doc. CCPR/C/SRB/CO/2, 20 May 2011, para. 21; "Concluding Observations of the UN Human Rights Committee on Uzbekistan", UN Doc. CCPR/C/UZB/CO/3, 7 April 2010, para. 24); "Concluding Observations of the UN Human Rights Committee on the Russian Federation", UN Doc. CCPR/C/RUS/CO/6, 24 November 2009, para. 16; "Concluding Observations of the UN Committee against Torture on the Russian Federation", UN Doc. CAT/C/RUS/CO/5, 11 December 2012, para. 12; "Concluding Observations of the UN Committee against Torture on Belarus", UN Doc. CAT/C/BLR/CO/4, 7 December 2011, para. 25; "Concluding Observations of the UN Committee against Torture on Turkmenistan", UN Doc. CAT/C/TKM/CO/1, 15 June 2011, para. 13; "Concluding Observations of the UN Committee against Torture on Azerbaijan", UN Doc. CAT/C/AZE/CO/3, 8 December 2009, para. 21.

properly investigated.[91] The Council of Europe Commissioner for Human Rights has expressed similar concerns in his reports.[92]

66. Common forms of threats and acts of violence against human rights defenders, which can be observed in a number of countries in the OSCE region, include verbal and physical abuse; arson or bomb attacks on homes, offices and cars of human rights defenders; destruction or seizure of their equipment and other property; excessive use of force against human rights defenders in the context of raids, assemblies and other policing operations; torture and other ill-treatment in detention; and the abduction or enforced disappearances and even killings of human rights defenders. Such abuses are not only directed against the human rights defenders themselves but also often against members of their families, including their children. Human rights defenders and their families become targets because perpetrators seek to prevent human rights work, retaliate against specific human rights activities or simply to instil fear. In most cases, the security risks that human rights defenders are exposed to appear to be long-term and part of a pattern of abuse intended to silence them.

67. Such abuses are either committed by non-state actors, including violent political groups, armed groups and organized crime, privately contracted security companies and others, or by state officials, or with their authorization, support or acquiescence. Sometimes abuses by violent groups are explicitly or implicitly legitimized by public officials.[93]

68. The obligations of participating States to respect, protect and fulfil human rights requires that they refrain from any threats or acts of violence against human rights defenders, protect them from such acts by non-state actors and take proactive measures to ensure their safety. In its resolutions, the UNGA routinely calls on states to ensure the protection of human rights defenders. The Council of Europe Committee of Ministers has urged Member States to "take effective measures to

91 See PACE Resolution 1891 (2012) on the situation of human rights defenders in Council of Europe member States, adopted on 27 June 2012, para. 3. For examples of cases of threats and attacks on physical integrity, including murder, and impunity for such violations, see the Explanatory Memorandum to the Resolution (Doc. 12957, report of the Committee on Legal Affairs and Human Rights, rapporteur: Ms Reps), in particular paras. 9-12 and 28-31. For information on reports of attacks on the physical integrity of human rights defenders, see also the information memorandum of the PACE rapporteur on her visits to Armenia, Azerbaijan and Georgia, Committee on Legal Affairs and Human Rights, "Strengthening the protection and role of human rights defenders in Council of Europe member states, Information memorandum about the situation of human rights defenders in the South Caucasus region (Armenia, Azerbaijan and Georgia)", AS/Jur (2014) 03, 24 January 2014.

92 See, for example, his report on the protection of migrants in Europe, where he noted reports of severe attacks against human rights defenders by extremist and far-right groups. See "The Protection of Migrant Rights in Europe, Round-Table with human rights defenders organised by the Office of the Council of Europe Commissioner for Human Rights, Paris, 5 October 2012", CommDH(2013)9, 18 April 2013, paras. 31-32.

93 See, for example, the December 2013 report of the UN Special Rapporteur on the situation of human rights defenders, which states: "The Special Rapporteur continues to receive credible reports and allegations indicating that non-State actors, including private corporations, are involved in violations against defenders, including stigmatization, threats, harassment, attacks, death threats and killings. Attacks are sometimes committed by groups which are directly or indirectly set off by States, either by providing logistical support or by condoning their actions, explicitly or implicitly" (UN Doc. A/HRC/25/55, para. 103).

prevent attacks on or harassment of human rights defenders, ensure independent and effective investigation of such acts and to hold those responsible accountable through administrative measures and/or criminal proceedings".[94] Similarly, the UNGA has called on states "to exercise due diligence in preventing violations and abuses against human rights defenders, including through practical steps to prevent threats, harassment and violence against women human rights defenders, who face particular risks, and in combating impunity by ensuring that those responsible for violations and abuses […] are promptly brought to justice through impartial investigations".[95]

Impunity and effective remedies

69. The UNGA has repeatedly called on states to take appropriate measures to end impunity for attacks, threats and acts of intimidation committed by state and non-state actors against human rights defenders.[96] However, investigations into threats and violence against human rights defenders are often insufficient to identify the perpetrators, while prosecutions – if initiated – often fail to bring those responsible to justice. According to the UN Special Rapporteur on the situation of human rights defenders, one of the major and systematic concerns raised during her mandate in relation to violations against human rights defenders is the question of impunity.[97]

70. In a number of OSCE participating States, human rights defenders report that complaints of abuses are not taken seriously, threats against them are underestimated or there is a general unwillingness to conduct thorough investigations into such allegations. Sometimes this is due to a lack of capacity of law enforcement officers to respond to threats and attacks against human rights defenders or a lack of appreciation of the severity of the risks and abuses to which human rights defenders are exposed. Sometimes it is due to the direct involvement of public officials in such acts or their tacit support for those responsible and/or their motives or ideology. Even when investigations are conducted and lead to prosecutions, they are often protracted or directed only against those who have carried out those acts, without bringing those who order attacks against human rights defenders to justice. All too often, prosecutions fail to bring those responsible to justice, or else result in lenient penalties or even acquittals being issued to the perpetrators.

71. As set out in Article 9(5) of the UN Declaration on Human Rights Defenders, states have a duty to "conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation

94 "Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities", 6 February 2008, para. 2(iv).

95 See UNGA Resolution A/RES/68/181, para. 9

96 See UNGA Resolution A/RES/66/164, para. 8. See also previous UNGA Resolutions A/RES/64/163, A/RES/62/152, A/RES/60/161 and A/RES/59/192.

97 See the report of the UN Special Rapporteur on the situation of human rights defenders A/HRC/25/55, 23 December 2013, para. 73.

of human rights and fundamental freedoms has occurred in any territory under its jurisdiction."

72. An investigation must respect a number of essential requirements in order to be effective. It must be:

a) adequate, i.e., capable of leading to the identification and punishment of those responsible;

b) thorough, i.e., comprehensive in scope and – among other things – capable of identifying any systematic failures that led to the violation;

c) impartial and independent, i.e., those responsible for carrying out the investigation must be impartial and independent from those implicated in the events;

d) prompt, i.e., the investigation must be commenced swiftly and be completed within a reasonable time;

e) and there should be a sufficient element of public scrutiny of the investigation or its result to secure accountability, which is particularly important to "maintain public confidence in the authorities' adherence to the rule of law and to prevent any appearance of collusion in or tolerance of unlawful acts".[98]

73. Concerning investigations into allegations of excessive use of force, torture and other ill-treatment, as well as other examples of abuse of power by law enforcement officials, UN Treaty Bodies regularly call on states to establish, where they do not exist, independent bodies with authority to receive and investigate complaints in relation to such acts.[99] Furthermore, the Council of Europe Committee of Ministers has also recommended states to consider giving or, where appropriate, strengthening the competence and capacity of NHRIs to receive, consider and make recommendations for the resolution of complaints by human rights defenders about violations of their rights.[100] Under all circumstances, complainants must be protected from any ill-treatment, intimidation or reprisals as a consequence of their complaints.[101] This also means that human rights defenders should not face retaliatory investigations or prosecution against them for bringing complaints.

98 "Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations", section VI. Criteria for an effective investigation, adopted on 30 March 2011, <https://wcd.coe.int/ViewDoc.jsp?id=1769177>.

99 See, for example, "Concluding Observations of the UN Committee against Torture on Kyrgyzstan", UN Doc. CAT/C/KGZ/CO/2, 20 December 2013, para. 6; "Concluding Observations of the UN Committee against Torture on Tajikistan", UN Doc. CAT/C/TJK/CO/2, 21 January 2013, para. 15; "Concluding Observations of the UN Committee against Torture on Armenia", UN Doc. CAT/C/ARM/CO/3, 6 July 2012, para. 12; "Concluding Observations of the UN Committee against Torture on Lithuania", UN Doc. CAT/C/LTU/CO/2, 19 January 2009, para. 14; and "Concluding Observations of the UN Human Rights Committee on Azerbaijan", CCPR/C/AZE/CO/3, 13 August 2009, para. 11.

100 Op. cit. "Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities", para. 2(v).

101 See "Concluding Observations of the UN Committee against Torture on Tajikistan", UN Doc. CAT/C/TJK/CO/2, para. 15.

74. Where the outcome of an investigation establishes the responsibility of the perpetrators of an attack against a human rights defender, the state has a duty to bring those responsible to justice, regardless of whether those responsible are public officials or non-state actors.[102] As the UN Committee against Torture has pointed out in relation to states' obligation to take effective measures to prevent torture, it is essential to investigate and establish the responsibility not only of the direct perpetrators, but also of persons in the chain of command.[103]

75. The fact that violations have been committed by a subordinate does not exempt the subordinate's superior from responsibility, in particular where criminal responsibility is established, if the superior knew or had at the time reason to know that the subordinate was committing or about to commit such a crime and did not take all necessary measures to prevent or punish the crime. As regards the responsibility of the subordinate, the fact that the perpetrator acted on orders of his or her government or of a superior does not exempt him or her from responsibility.[104] A subordinate who refuses to carry out an unlawful order, however, shall not face criminal or disciplinary sanctions.[105]

76. Any public officials who have been found by a competent authority to be responsible for serious human rights violations or for furthering or tolerating impunity must be removed from office or subjected to other appropriate disciplinary procedures.[106] Where relevant, such procedures must be accompanied by criminal prosecution[107] and sentencing, which should be effective, proportionate and appropriate to the offence committed.[108] Among other things, this means that the sentences should show that such acts are not tolerated and should have a sufficient dissuasive effect.

77. Given the important role of human rights work in a democratic society and the fact that threats and violence against human rights defenders on account of their human rights work often seeks to instil fear not only in the immediate victim but

102 See, for example, UN Human Rights Committee General Comment No. 31, "The Nature of the General Legal Obligation Imposed on States Parties to the Covenant", UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 18.

103 See UN Committee against Torture, General Comment No. 2, "Implementation of Article 2 by States Parties", UN Doc. CAT/C/GC/2, 24 January 2008, para. 9.

104 The following of orders or instructions may, however, have a bearing on the sentencing of the subordinate. See "Updated Set of principles for the protection and promotion of human rights through action to combat impunity", UN Doc. E/CN.4/2005/102/Add.1, 8 February 2005, principle 27. See also "Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations, section XIII. Accountability of subordinates. See also "Basic Principles on the Use of Force and Firearms by Law Enforcement Officials", Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, principles 24 and 26.

105 See "Basic Principles on the Use of Force and Firearms by Law Enforcement Officials", principle 25.

106 See "Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations", section III. General measures for the prevention of impunity, para. 7.

107 The requirements for an investigation to be effective also apply at the prosecution stage. *Ibid.* section VIII. Prosecutions.

108 *Ibid*. section X. Sentencing.

also in other human rights defenders to prevent them from carrying out their work, participating States should consider adopting national legislation that recognizes such motives as an aggravating factor in relation to sentencing for such crimes.[109]

78. If human rights defenders become targets of violent attacks that are motivated by intolerance towards a specific social group, authorities should punish such crimes under relevant hate crime legislation. Such crimes may include attacks committed against human rights defenders protecting the rights of those who, as a consequence of their ethnicity, religion, "race", citizenship, gender, disability or any other status, are themselves particularly vulnerable to hate crimes. Relevant hate crime legislation should be applied irrespective of whether those targeted belong to these groups themselves or whether they are associated or affiliated with them through their human rights work. Participating States should enact, where appropriate, specific and tailored legislation to combat hate crime, in line with their OSCE commitments, providing for effective penalties that take into account the gravity of such crimes.[110] In reviewing existing legislation, participating States should be guided by, among other resources, the OSCE/ODIHR publication on Hate Crime Laws – A Practical Guide.[111]

79. As the Council of Europe Committee of Ministers has stated, "impunity is caused or facilitated notably by the lack of diligent reaction of institutions or state agents to serious human rights violations. In these circumstances, faults might be observed within state institutions, as well as at each stage of the judicial or administrative proceedings."[112] In order to prevent and combat an institutional culture which promotes impunity, it has also called on states to elaborate policies and take other practical measures, such as promoting a culture of respect for human rights at the national level, establishing or reinforcing appropriate training and control mechanisms, introducing anti-corruption policies, making the relevant authorities aware of their obligations and establishing appropriate sanctions for the failure to uphold those obligations, conducting a policy of zero-tolerance of serious human rights violations and providing information to the public concerning violations and the authorities' response to these violations.[113]

109 An example of good practice in this respect, albeit not from a country within the OSCE region, is the Penal Code of El Salvador, which considers it as aggravating circumstance for criminal responsibility if a crime is motivated by the work of the victim in the field of the promotion and protection of human rights and fundamental freedoms. See Article 30 of the Penal Code of El Salvador, <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/codigo-penal>.

110 See OSCE Ministerial Council, Decision No. 9/09, "Combating Hate Crimes", Athens, 1-2 December 2009, <http://www.osce.org/cio/40695>.

111 See OSCE/ODIHR, "Hate Crime Laws – A Practical Guide", 2009. On the issue of association and affiliation, see pp. 49-51.

112 "Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations", section I. The need to combat impunity, para. 2.

113 Ibid. section III. General measures for the prevention of impunity.

80. States have been called on to "strengthen their judicial systems and ensure the existence of effective remedies for those whose rights and freedoms are violated".[114] Such remedies must be accessible and fully effective.[115] OSCE participating States have affirmed the right to seek and receive adequate legal assistance as part of an effective remedy.[116]

81. The UN Human Rights Committee has also emphasized that such remedies should be appropriately adapted so as to take into account the special vulnerability of certain categories of people.[117] The UNGA has stressed that impunity for violations and abuses against women human rights defenders remain of particular concern owing to several factors, including a lack of reporting, documentation, investigation and access to justice, as well as social barriers and constraints with regard to addressing gender-based violence, including sexual violence and the stigmatization that may result from such violations.[118] Participating States should therefore take proactive steps to ensure that women human rights defenders and other groups of human rights defenders at particular risk have effective access to justice, for example by providing these groups legal aid and other support.[119]

82. Furthermore, the UN Human Rights Committee has stated that "the right to an effective remedy may in certain circumstances require States Parties to provide for and implement provisional or interim measures to avoid continuing violations and to endeavour to repair at the earliest possible opportunity any harm that may have been caused by such violations."[120] In any case, human rights defenders (and/or their families) who have been subjected to violence and other abuses have a right to obtain appropriate reparation.

83. The term reparation is commonly defined as including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. If possible, the situation of the victim before the violation should be restored by restitution. If that is not possible, compensation should be provided for any damage that can be

114 Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities, para. 2(iii).

115 See, for example, UN Human Rights Committee General Comment No. 31, para. 15, which states that "in addition to effective protection of Covenant rights States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights." For OSCE human dimension commitments related to legal remedies for those who claim that their human rights and fundamental freedoms have been violated, see, for example: Vienna 1989, para. 13.9; Paris 1990; Copenhagen 1990, para. 11; Ljubljana 2005; and Helsinki 2008.

116 Copenhagen 1990, para. 11.

117 Human Rights Committee General Comment No. 31, para. 15.

118 See UNGA Resolution A/RES/68/181, 18 December 2013, preambular para. 10.

119 For example, the Committee on the Elimination of Racial Discrimination (CERD) has recommended in its Concluding Observations on Sweden that the state party, with a view to guaranteeing remedies to victims of discrimination, "implement the measures proposed by the Ombudsman in order to provide financial assistance to individuals and associations to facilitate litigation in discrimination cases (...) and strengthen the legal aid system." See Committee on the Elimination of Racial Discrimination, "Concluding Observations: Sweden", UN Doc. CERD/C/SWE/CO/19-21, 23 September 2013, para. 21.

120 UN Human Rights Committee General Comment No. 31, para. 19.

financially assessed, for example, for physical or mental harm, material damage and costs required for legal or expert assistance or other services. Rehabilitation should include appropriate medical, psychological legal and social services. Satisfaction may include a variety of measures depending on the circumstances of the case, such as the following: effective steps to end continuing violations; public disclosure of the truth; an official declaration or a judicial decision that restores the dignity, reputation and rights of the victim, their family members or other persons close to the victim; and a public apology and appropriate sanctions against the perpetrators. Finally, guarantees of non-repetition should include effective preventive measures.[121]

Protection policies, programmes and mechanisms

84. The UNGA has repeatedly called on all states "to take all measures necessary to ensure the protection of human rights defenders, at both the local and national levels".[122] All such measures should be firmly embedded in a consistent framework aimed at creating and consolidating a safe and enabling environment for human rights work in order to tackle the root causes of the serious risks and challenges that human rights defenders face. An acknowledgment by state officials at the highest level, as well as by relevant national and local authorities, of the status and role of human rights defenders and the legitimacy of their work, including through public statements and prompt condemnation of any attacks, threats and other abuses as they occur, is a first step towards improved protection and prevention.[123]

85. In the OSCE region as elsewhere, in the absence of tailored programmes for the provision of protection measures for human rights defenders at risk, responses to imminent security threats are reportedly often slow and ineffective. A lack of co-ordination and lengthy bureaucratic procedures in providing protection measures are frequently compounded by a failure of state officials to treat security concerns of human rights defenders seriously and an unwillingness to investigate threats and abuses. Insufficient understanding of the problems facing human rights defenders and of the obligation of states to protect them is often coupled with a lack of recognition of the importance of their work and of material resources to provide protection more generally. Consequently, human rights defenders who are at imminent risk are too often left without adequate assistance, including physical and psychological protection, assistance in relocating to safe places or other necessary support.

121 See "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law", adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005, para. 20-24.

122 See UNGA Resolution A/RES/ 64/164, para. 4, and also earlier General Assembly resolutions on human rights defenders. For further details on the protection of human rights defenders in third countries, see also the *Framework for Implementation* section below.

123 See the report of the Special Rapporteur on the situation of human rights defenders, A/HRC/13/22 para. 114.

86. The UN Special Rapporteur on the situation of human rights defenders has recommended that states develop public policies and specific institutional mechanisms to, when necessary, provide physical and psychological protection, as well as material resources to that end.[124] The Special Rapporteur has also presented a set of minimum guidelines for the development of protection programmes, recommending that states consult with human rights defenders in developing and reviewing such programmes. The structure of protection programmes should be defined by law, while in federal states protection programmes should be defined by federal law and administered by the federal government. Protection programmes should include early warning functions to anticipate and trigger protective measures. They should also provide for an assessment of the safety of family members of human rights defenders who are at risk. Security and law enforcement officials involved in the programme should be specifically and appropriately trained, while physical protection measures should not be outsourced to third parties unless these are trained accordingly. Finally, adequate financial resources should be allocated to the protection programme.[125]

87. The UN Special Rapporteur on the situation of human rights defenders has found that many states use their witness-protection programmes as the only mechanisms to ensure the protection of human rights defenders at risk. In most cases, such programmes do not appear to be sufficient to provide safety for human rights defenders as they have not been designed for that purpose.[126] In principle, therefore, witness protection programmes should not be used as substitutes for tailored human rights defender protection programmes. If states use these programmes as the basis for the protection of human rights defenders, they should ensure that these programmes meet their specific needs or that they include appropriate additional measures.

88. Regardless of the system used by participating States for the physical and psychological protection of human rights defenders at risk, it is of particular importance that protection programmes are accessible to those who are most in need of protection and that the mechanisms administering them operate in a fair, independent and transparent manner and with the full participation of the beneficiaries. Any protective measures employed should be agreed upon with the individual human rights defender concerned. Furthermore, it is essential that the law enforcement officers and judicial officials involved are adequately trained and sensitized in order to be able to identify the safety and security risks facing human rights defenders and to appropriately address them. The qualifications and integrity of the officials involved in such programmes are also essential to ensuring trust between human rights defenders and the authorities, as trust is an important precondition for the

124 See the report of the Special Rapporteur on the situation of human rights defenders, A/HRC/25/55, paras. 84 and 131.

125 See *Ibid.* para. 88 and A/HRC/13/22, 30 December 2009, which deals with the issue of security and protection of human rights defenders at length.

126 See A/HRC/13/22, paras. 71-74.

functioning of any protection programme. Where human rights defenders face major threats, dedicated and adequately resourced units of specifically trained law enforcement officers should be set up as a measure to strengthen the overall protection framework and ensure a rapid response and the swift provision of physical security and other support.

89. Given the specific risks and security needs of women human rights defenders, the UNGA has urged states to develop and put in place comprehensive, sustainable and gender-sensitive public policies and programmes that support women human rights defenders.[127] Such policies and programmes should be adequately resourced so as to provide immediate and long-term protection, while steps should be taken to ensure that these resources can be mobilized flexibly and swiftly in order to guarantee effective protection.[128] Public protection policies and programmes should also take into account the specific challenges and needs of other categories of human rights defenders, including youth and children human rights defenders, as well as at-risk human rights defenders, for example, those combating intolerance and xenophobia.

90. In addition to providing physical protection and/or emergency relocation, protection policies and programmes should facilitate, wherever necessary, access to support services for human rights defenders, including emergency relief, shelters, psychological support and rehabilitation for victims of human rights violations, as well as counselling, legal advice and assistance.[129] Participating States should designate sufficient funds for this purpose and, where necessary, should seek international assistance to do so. They should also support civil society organizations and other actors who provide such services.

91. Furthermore, participating States should support at-risk human rights defenders and their organizations in building their own capacity so that they may, for example, take steps towards their own safety, manage risks and security and build solidarity, rapid response and support networks among themselves at the local regional, national and international levels.

127 See UNGA Resolution A/RES/68/181, para. 19.

128 *Ibid*.

129 The UNGA Resolution on women human rights defenders (A/RES/68/181) calls on States "to adopt and implement policies and programmes that provide women human rights defenders with access to effective remedies, including by ensuring: [...] (b) adequate access to comprehensive support services for those women human rights defenders who experience violence, including shelters, psychological services, counselling, medical care and legal and social service", para. 21.

B. Protection from judicial harassment, criminalization and arbitrary arrest and detention

92. By proclaiming that "all action by public authorities must be consistent with the rule of law, thus guaranteeing legal security for the individual,"[130] participating States reaffirmed the priority of the legality principle with regard to the actions of public authorities, thus prohibiting the arbitrary or discriminatory targeting of individuals. In addition, they have committed themselves to "ensure that no one will be subjected to arbitrary arrest, detention or exile."[131] With specific reference to journalists, they have condemned "all attacks on and harassment of journalists" and endeavoured "to hold those directly responsible for such attacks and harassment accountable."[132]

93. The UN Human Rights Council has called upon states to ensure that the promotion and protection of human rights are not criminalized and that human rights defenders are not prevented from enjoying universal human rights as a result of their work. Furthermore, the Council has called on states to ensure that no one is subjected to, inter alia, arbitrary arrest or detention, the abuse of criminal and civil proceedings or threats thereof.[133]

Criminalization and arbitrary and abusive application of legislation

94. Nevertheless, in a number of OSCE participating States, human rights defenders continue to be criminalized for legitimate activities in promoting and protecting human rights and are targeted by judicial and other forms of harassment. For the purpose of the present Guidelines, the term "judicial harassment" is understood as the application of unwarranted legal and administrative proceedings or any other forms of misuse of administrative and judicial authority, including arbitrary and abusive application of legislation with the purpose or effect of obstructing or stigmatizing human rights work.

95. The judicial harassment of human rights defenders and the criminalization of their work take a number of forms, including the following: the prosecution of human rights defenders under vague laws allowing for the arbitrary application of laws that criminalize legitimate human rights activities; fabricated criminal charges, spurious lawsuits or false civil claims; disproportionate sanctions for minor offences; and the abuse of administrative procedures and regulations (for example, concerning the operation of NGOs, financial and tax matters or road traffic regulations). In some participating States, such incidents of harassment by law enforcement and security services and judicial and other state officials are reported frequently, with family members of at-risk human rights defenders of also being targeted.

130 Budapest 1994, "Decisions: VIII. The Human Dimension", para. 18.

131 Vienna 1989, "Questions Relating to Security in Europe: Principles", para. 23.1.

132 Budapest 1994, "Decisions: VIII. The Human Dimension", para. 37.

133 UN Human Rights Council, Resolution on protection of human rights defenders, A/HRC/RES/22/6, paras. 6 and 11(a).

Intimidation and harassment may also be initiated by non-state actors, with the state either condoning or actively supporting such actions. Judicial harassment and criminalization can result in human rights defenders facing arbitrary arrest and detention,[134] long prison terms or the deprivation of their liberty on other grounds, such as by involuntary psychiatric commitment for punitive purposes.[135]

96. Racist, sexist and other bias by representatives of state authorities, including law enforcement agents and judicial officials, may impact both the capacity and the political will to condemn, investigate and prosecute instances of threats and violence directed towards human rights defenders working on minority rights and gender issues.[136] It may also result in or compound judicial and other forms of harassment by the authorities targeting these human rights defenders. Human rights defenders working on issues perceived as sensitive in some participating States, such as gender-based violence and women's rights, have also faced observably higher risks of such undue interference with their activities.

97. Harassment and intimidation may take subtle forms, often disguised as formally originating in the law. Legislative vagueness and loopholes in the law may be exploited to criminalize human rights defenders (see also the section on *Freedom of opinion and expression* below). The UN Special Rapporteur on the situation of human rights defenders has observed a particular tendency whereby more sophisticated forms of interference with the work of human rights defenders are employed, "including the application of legal and administrative provisions or the misuse of the judicial system to criminalize [...] their activities."[137] The Special Rapporteur has noted that "[t]hese patterns not only endanger the physical integrity and undermine the work of human rights defenders, but also impose a climate of fear and send an intimidating message to society at large."[138]

134 The UN Special Rapporteur on the situation of human rights in Belarus, for example, has noted reports of "persistent acts of intimidation and the judicial harassment of human rights defenders, at times resulting in prison sentences and heavy fines amid reports of due process irregularities in trials", UN Doc. A/HRC/23/52, 18 April 2013, para. 92.

135 According to information reported to ODIHR, the forced institutionalization of human rights defenders in psychiatric hospitals to silence them is often accompanied by involuntary medical treatment, which is an interference with the right to private life and can constitute a serious violation of the right to physical integrity. See, for example, the concerns about the alleged forced psychiatric treatment and confinement of human rights defenders expressed by several UN Special Procedure mandates, including the Special Rapporteur on the situation of human rights defenders, in their joint urgent appeals to the governments of Ukraine and Kazakhstan, UKR 2/2013, 22 July 2013, <https://spdb.ohchr.org/hrdb/24th/public_-_UA_Ukraine_22.07.13_(2.2013).pdf>; and KAZ 4/2013, 22 August 2013, <https://spdb.ohchr.org/hrdb/24th/public_-_UA_Kazakhstan_22.08.13_(4.2013).pdf>.

136 As set out in the section on "Confronting stigmatization and marginalization" below, in its resolution on women human rights defenders the UNGA expressed particular concern at discriminatory practices and social norms or patterns that serve to condone violence against women, and invited leaders from all sectors of society, including political, military, social and faith leaders, to express public support for the important role of women human rights defenders and the legitimacy of their work. See A/RES/68/181, preamble and operative para. 15.

137 Report of the Special Rapporteur on the situation of human rights defenders, A/HRC/25/55, 23 December 2013, para. 59.

138 *Ibid*.

98. International case law has affirmed the unlawfulness of exploiting gaps in the law to silence human rights defenders. In the case of one human rights defender sentenced to administrative detention for holding an unauthorized assembly, in spite of the fact that the domestic law required no such authorization, the ECtHR held that there had been a violation of freedom of assembly, among others, given the existence of a legislative gap concerning this right.[139]

99. The UN Special Rapporteur on the situation of human rights defenders has noted with concern "a disturbing trend towards the criminalization of activities carried out by unregistered groups."[140] Moreover, in this context, groups whose attempts to register are repeatedly rejected become easy targets for criminal prosecution when they continue to operate. In the participating States that require prior authorization for NGO funding received from abroad, human rights defenders may face criminal penalties if they fail to comply with the authorization requirement. This practice has been condemned by the UN Human Rights Committee, which has pointed out that non-governmental organizations should be able "to discharge their functions without impediments which are inconsistent with the provisions of article 22 [freedom of association] of the Covenant, such as prior authorization, funding controls and administrative dissolution."[141] Similarly the UN Committee on the Rights of the Child has expressed concern at the criminalization of members of NGOs operating without being registered.[142]

100. Similarly, laws designed to prevent and prosecute terrorism and "religious extremism" have often been invoked to criminalize activities by human rights defenders. The above-mentioned restrictions on NGO funding have been abused in order to silence human rights groups under the guise of combating terrorism financing and money laundering.[143] Concerning national security legislation, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has reiterated the concern about the use of "an amorphous concept of national security to justify limitations on the enjoyment of human rights", a concept that "is broadly defined and is thus vulnerable to manipulation by the State as a means of justifying actions that target vulnerable groups such as human rights defenders, journalists or activists."[144]

139 See European Court of Human Rights, *Vyerentsov v. Ukraine,* Application no. 20372/110, Judgement of 11 April 2013.

140 Report of the Special Rapporteur on the situation of human rights defenders, A/HRC/25/55, para. 68.

141 "Concluding Observations of the UN Human Rights Committee on Egypt", UN Doc. CCPR/CO/76/EGY, 28 November 2002, para. 21.

142 Concluding Observations of the UN Committee on the Rights of the Child on Belarus", CRC/C/BLR/CO/3-4, 8 April 2011, paras. 23-24.

143 See for example, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/20/27, May 21, 2012, para. 94; and Report of the Special Rapporteur on the situation of human rights defenders, UN Doc. A/64/226, August 4, 2009, para. 94.

144 See Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association A/HRC/23/40, para. 60.

101. The UN Human Rights Council, referring specifically to measures intended to counter terrorism and preserve national security, has called on states to ensure that such measures "do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights," while stressing the importance of providing clear and unambiguous definitions of terrorism-related offenses in the law, as well as the imperative requirement that terrorism suspects enjoy due process guarantees throughout legal proceedings.[145] As such, participating States should ensure that legislation designed to criminalize terrorist-related offenses, including terrorism financing, is strictly construed to minimize the risk of politically-motivated or otherwise abusive application.

102. Effectively combating the criminalization and judicial harassment of human rights defenders also requires a concerted effort by state institutions to improve the integrity of law enforcement and the independence of the judicial and prosecutorial systems. This will ensure legislative clarity and predictability in conformity with the legality principle and will empower marginalized or otherwise vulnerable groups, while roundly condemning intimidation and bias-motivated violence by non-state actors. In this vein, the UN Human Rights Council has called on states to ensure that "[t]he judiciary is independent, impartial and competent to review effectively legislation and its application affecting the work and activities of human rights defenders".[146]

103. Efforts need to be made to reinforce the capacities of prosecutorial and law enforcement bodies to uphold the highest ethical standards in their work. In particular, participating States should prioritize the development of viable internal and external oversight mechanisms, including civilian oversight boards for police, to promptly reveal and independently investigate misconduct and to impose appropriate disciplinary sanctions or initiate criminal proceedings where such misconduct has been established. Law enforcement, judicial and other relevant officials should also receive training to sensitize them about the important role played by

145 Human Rights Council, Resolution on protection of human rights defenders, A/HRC/RES/22/6, para. 10, which: "Further calls upon States to ensure that measures to combat terrorism and preserve national security:

(a) Are in compliance with their obligations under international law, in particular under international human rights law, and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights;

(b) Clearly identify which offences qualify as terrorist acts by defining transparent and foreseeable criteria, including, inter alia, considering without prejudice those formulated by the Special Rapporteur on the promotion and protection of human rights while countering terrorism;

(c) Prohibit and do not provide for, or have the effect of, subjecting persons to arbitrary detention, such as detention without due process guarantees, the deprivation of liberty that amounts to placing a detained person outside the protection of the law, or the illegal deprivation of liberty and transfer of individuals suspected of terrorist activities, nor the unlawful deprivation of the right to life or the trial of suspects without fundamental judicial guarantees;

(d) Allow appropriate access for relevant international bodies, non-governmental organizations and national human rights institutions, where such exist, to persons detained under anti-terrorism and other legislation relating to national security, and to ensure that human rights defenders are not harassed or prosecuted for providing legal assistance to persons detained and charged under legislation relating to national security".

146 See A/HRC/RES/22/6, para. 11(b).

human rights defenders in society, the specific risks they face as a result of their work and their protection needs, including in relation to judicial harassment and other abuse. Special attention should also be paid to combating harmful stereotypes among law enforcement agents and public servants in order to discourage the harassment of human rights defenders working on promoting and protecting the rights of marginalized or otherwise vulnerable groups, and to encourage the vigorous investigation of reports of bias-motivated crime and gender-based violence.

104. Human rights defenders who file charges against a person or institution for human rights violations should always be treated with dignity and should be effectively protected from retaliatory charges, arbitrary prosecution and other legal actions. This is particularly important for human rights defenders who engage in strategic human rights litigation, including on behalf of persons belonging to marginalized or otherwise vulnerable groups, and who may be subjected to inappropriately personal, offensive or aggressive questioning by judicial authorities or defence attorneys. "Lawyers should not suffer or be threatened with any sanctions or pressure when acting in accordance with their professional standards,"[147] including when they litigate in cases concerning human rights violations against persons belonging to national or ethnic, religious and linguistic minorities or regarding discrimination. Similarly, witnesses who testify in cases against state officials or institutions concerning alleged human rights violations should be effectively protected from any form of pressure.

Arbitrary detention and treatment in detention

105. Article 9 of the ICCPR, Article 5 of the ECHR and Article 7 of the ACHR provide for the right to liberty and security of person and basic safeguards against arbitrary detention. According to the methodology of the UN Working Group on Arbitrary Detention, deprivation of liberty is arbitrary, *inter alia,* when "it is clearly impossible to invoke any legal basis justifying the deprivation of liberty"; when the deprivation of liberty results from the exercise of the rights to freedom of opinion and expression, assembly and association, as well as a number of other fundamental rights and freedoms set out in the Universal Declaration of Human Rights and the ICCPR; and when the "total or partial non-observance of the international norms relating to the right to a fair trial [...] is of such gravity as to give the deprivation of liberty an arbitrary character".[148] Deprivation of liberty includes police custody, remand detention imprisonment after conviction, house arrest, involuntary hospitalization or committal to a psychiatric institution, among other forms of detention.

147 See "Document of the Fourteenth Meeting of the Ministerial Council", Brussels Declaration on Criminal Justice Systems, 2006.

148 See information about working methods, "Individual complaints and urgent appeals", Working Group on Arbitrary Attention, <http://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx>. Concerning the second category of cases, the Working Group regards deprivation of liberty as being arbitrary when it "results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 10 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights".

106. In accordance with international standards, detention must be authorized by a judicial authority, and those in detention should have unimpeded access to legal counsel and an enforceable right to challenge their detention. As the UN Human Rights Committee has pointed out, this applies to all persons deprived of their liberty by arrest or detention, regardless of whether the deprivation of liberty relates to a criminal case or whether it is imposed on other grounds such as mental illness, vagrancy, drug addiction, educational purposes or immigration control, among others.[149] In general, participating States should make fuller use of alternative sanctions, and the use of detention for misdemeanour offenses should be discouraged.

107. Members of the armed forces who engage in activities for the defence of their own human rights or those of others should also enjoy basic safeguards against arbitrary detention.[150] Members of the armed forces or law enforcement services charged with disciplinary or criminal offences in relation to human rights activities should be given a fair hearing and the opportunity to appeal to an independent body. They should not be arrested or detained without recourse to justice.

108. Human rights defenders found to be arbitrarily detained should be immediately and unconditionally released and should receive adequate reparation. Participating States should promptly and fully implement the judgements of international courts, namely the ECtHR, as well as the opinions of quasi-judicial bodies, such as the UN Working Group on Arbitrary Detention and the UN Human Rights Committee.

149 See UN Human Rights Committee, General Comment No.8, Article 9, "Right to Liberty and Security of Persons", 30 June 1982, para. 1. The Human Rights Committee is currently elaborating a new General Comment on Article 9. According to the current draft, "[e]xamples of deprivations of liberty include police custody, remand detention, imprisonment after conviction, house arrest, involuntary hospitalization, and confinement to a restricted area of an airport, and also include being involuntarily transported." See Draft General Comment No. 35, UN Doc. CCPR/C/107/R.3, 28 January 2013, para. 6. As set out in General Comment No. 8, the guarantees of Article 9 also apply to so-called preventive detention, see para. 4.

150 According to the Council of Europe Committee of Ministers Recommendation CM/Rec(2010)4, no member of the armed forces should be deprived of his or her liberty except in cases provided for under Article 5(1) of the ECHR and in accordance with a procedure prescribed by law. If arrested or detained, they should be informed promptly of the reasons for their arrest or detention, any charge against them, and their procedural rights. Furthermore, members of the armed forces who are deprived of their liberty should be entitled to take proceedings to have the lawfulness of their detention reviewed by a court. Disciplinary penalties or measures which amount to deprivation of liberty within the meaning of Article 5(1) should also comply with the requirements of this provision (Appendix to the Recommendation, paras. 22-27). Concerning disciplinary proceedings, the Recommendation affirms that military discipline should be characterized by fairness and that procedural guarantees should be secured; that only conduct likely to constitute a threat to military discipline, good order, safety or security may be defined as a disciplinary offence; and that members of the armed forces charged with disciplinary offences should be informed promptly, in detail, of the nature of the accusations against them; that they have the right to a fair hearing (where Article 6 of the ECHR on the right to a fair trial applies); and that they should also be given the opportunity to appeal to a higher and independent body (see paras. 17 and 21). Furthermore, in order to safeguard the independence and impartiality of judicial authorities acting in criminal proceedings against members of the armed forces, there should be a clear separation between the prosecuting authorities and those handing down the court decision (para. 29). See Recommendation CM/Rec(2010)4 of the Committee of Ministers to member states on human rights of members of the armed forces, adopted on 24 February 2010.

109. Human rights defenders deprived of their liberty have a right to be treated with humanity and with respect for their inherent dignity.[151] This requires that conditions in detention facilities must be such that they do not amount to inhuman and degrading treatment. Human rights defenders deprived of their liberty must not be subjected to discriminatory treatment or detention conditions that function as a form of punishment for their human rights work. They must be effectively protected from torture and other ill-treatment and any potential abuses committed by other inmates. The treatment of human rights defenders deprived of their liberty should be fully in line with the UN Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Basic Principles on the Treatment of Prisoners.[152]

110. To address specific problems that women human rights defenders may face in detention, participating States should take steps to protect them from gender-based violations and should provide them with services in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules).[153] Similarly, participating States should take steps to address the needs of other groups of human rights defenders who are at particular risk of violence and other abuse.[154]

Fair trial

111. In accordance with Article 14 of the ICCPR, Article 6 of the ECHR and Article 8 of the ACHR, everyone facing criminal charges is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law and other fair trial rights. In particular, everyone charged with a criminal offence has the right to be presumed innocent until proven guilty. Furthermore, Article 14 of the ICCPR provides, inter alia, for the following: the right to be informed promptly and in detail of the nature and cause of the charges; the right to have adequate time and facilities for the preparation of the defence; the right to a lawyer of one's choice; the right to free legal assistance where required; the right to be tried in one's presence; the right to call and examine witnesses on one's behalf; and the right not to be compelled to testify against oneself or to confess guilt.[155]

151 See Article 10 of the ICCPR.

152 "Standard Minimum Rules for the Treatment of Prisoners", adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977; and "Basic Principles for the Treatment of Prisoners", adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990.

153 "United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)", adopted by the UNGA Resolution A/RES/65/229 on 21 December 2010.

154 This includes on account of, for example, their sexual orientation, gender identity and gender expression. See, for example, United Nations Office on Drugs and Crime (UNODC), "Handbook on Prisoners with special needs", 2009, <http://www.unodc.org/documents/justice-and-prison-reform/Prisoners-with-special-needs.pdf>; for specific recommendations concerning LGBTI individuals, see pp. 119-122.

155 See Article 14(3).

112. Human rights defenders facing charges are entitled to the full range of fair trial safeguards under international human rights law and relevant OSCE commitments.[156] They are entitled to an effective remedy and adequate reparation where any of their fair trial rights have been violated. In particular, allegations that a confession has been extracted under duress including torture, which constitutes a flagrant violation of the right to a fair trial, must be promptly, effectively, independently and impartially investigated, while the use of any evidence, including statements by witnesses, obtained under torture and other ill-treatment must be excluded by the judiciary.[157]

113. The UN Human Rights Council has called on states to ensure that "[p]rocedural safeguards, including in criminal cases against human rights defenders, are in place in accordance with international human rights law in order to avoid the use of unreliable evidence, unwarranted investigations and procedural delays, thereby effectively contributing to the expeditious closing of all unsubstantiated cases, with individuals being afforded the opportunity to lodge complaints directly with the appropriate authority".[158]

114. In accordance with their OSCE commitments, participating States should further strengthen judicial independence in order to minimize the risk of politically-motivated judicial action or skewed judgement due to influences external to the court. In particular, participating States should allow and encourage the presence of trial observers at court proceedings as a mechanism to monitor the practical implementation of fair trial rights. In this regard, participating States have decided to accept "as a confidence-building measure the presence of observers sent by participating States and representatives of non-governmental organizations and other interested persons at proceedings before courts."[159] Furthermore, they have stated that "it is understood that proceedings may only be held in camera in the circumstances prescribed by law and consistent with obligations under international law and international commitments."[160] Accordingly, courts should also be obliged to make hearing schedules and other relevant documents, such as judgements, accessible to the public, in order to guarantee the transparency of proceedings.

156 See, for example: Vienna 1989; Copenhagen 1990; Ljubljana 2005; and Helsinki 2008.

157 International human rights mechanisms have expressed concern in a number of cases where human rights defenders have allegedly been subjected to torture to extract a confession. For example, following his visit to Kyrgyzstan, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stated that: "The decision of the Supreme Court of 20 December 2011 upholding the life sentence for prominent human rights defender Azimjan Askarov and other defendants convicted in relation to the violence of June 2010, despite reports of his torture in detention and defendants' claims that confessions had been extracted under duress, is an example of the highest judicial body's failure to act on allegations of torture and ill-treatment. The recent decision of the Supreme Court of 9 December 2011, which upheld the lower instance courts' ruling on the acquittal of four policemen prosecuted for torturing the victim, even though there was sound medical evidence in the record of savage acts of torture, is yet another discouraging example of a failed administration of justice." See A/HRC/19/61/Add.2, 21 February 2012, para. 49.

158 See UN Human Rights Council Resolution A/HRC/RES/22/6, para. 11(c).

159 Copenhagen, 1990, para. 12.

160 *Ibid*.

C. Confronting stigmatization and marginalization

115. Participating States have recognized that the active involvement of individuals, groups, organizations and institutions is essential to ensuring continued progress towards their shared objectives. These objectives include strengthening respect for, and enjoyment of, human rights and fundamental freedoms. Furthermore, participating States have committed to respect "the right of their citizens to contribute actively, individually or in association with others, to the promotion and protection of human rights and fundamental freedoms,"[161] and "the right of everyone, individually or in association with others, to seek, receive and impart freely views and information on human rights and fundamental freedoms, including the rights to disseminate and publish such views and information."[162]

116. The UN Declaration has also reaffirmed, for example, the right of everyone to communicate with non-governmental or intergovernmental organizations (Article 5 (c)) and to solicit, receive and utilize – individually and in association with others – resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means (Article 13).

117. Despite these and other commitments, human rights defenders continue to be stigmatized in many countries for the exercise of these rights and their activities.[163] Human rights work is often portrayed as political work or as political opposition activity as it often involves criticizing the authorities and challenging the views of the majority. However, in accordance with international standards, individuals have a right to participate in the conduct of public affairs, inter alia, by submitting to the authorities criticism or proposals concerning how to strengthen the protection of human rights. Activities to influence public opinion and decision-making are an important element of human rights work and are essential for enhancing the observance of human rights. Therefore, human rights work should not be mistaken for partisan political activity. Rather, participating States should recognize the importance and legitimacy of human rights work.

118. The UN Special Rapporteur on the situation of human rights defenders has expressed the concern that human rights defenders are often branded enemies of the state or terrorists in an attempt to delegitimize their work and activities.[164] Common attempts to do so in the OSCE region include the labelling of human rights defenders as extremists, traitors or spies, discrediting their work as activity aimed

161 Vienna 1989, "Questions Relating to Security in Europe: Principles", para. 13(5).

162 Copenhagen 1990, para. (10.1).

163 In 2001, in her first report to the UNGA the then Special Representative of the Secretary General on human rights defenders reported that "Smear campaigns against human rights defenders have become a tool increasingly used to discredit their work." This has not substantially changed since then, although it seems that the methods of discrediting human rights defenders have even become more sophisticated. See report by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani, UN Doc. A/56/341, 10 September 2001, paras. 36-40.

164 See the report of the Special Rapporteur on the situation of human rights defenders A/HRC/25/55, 23 December 2013, para. 86.

at overthrowing the government or accusing human rights defenders of defending criminals or being criminals themselves.

119. PACE has expressed the concern that "defenders face defamation campaigns aimed at discrediting them or are accused of being unpatriotic, traitors, 'spies', or 'extremists' in a number of the organization's member states".[165] Moreover, PACE has called on member states to stop making unfounded accusations of human rights defenders as being "extremists or agents of foreign powers".[166]

120. In a number of OSCE participating States, stigmatization and smear campaigns appear to contribute to a wider pattern of delegitimizing human rights defenders who receive funds or perform their work in a professional capacity as being driven primarily by financial gain rather than by motives related to the cause of human rights. Moreover, in some participating States, human rights work is discredited through the adoption of legislation that, for example, portrays human rights defenders who receive foreign funding as 'foreign agents'.[167] Any such laws should be reviewed in consultation with human rights defenders and, if necessary, amended or repealed.

121. It has been reported that human rights defenders or their organizations are targeted individually by orchestrated smear campaigns, including through the media, as well as other forms of stigmatization designed to damage their personal reputation or the credibility of their organization. For example, gender stereotypes are regularly used to discredit women human rights defenders.[168] As the UN Working Group on the issue of discrimination against women in law and practice has emphasized, women human rights defenders also experience harassment, threats

165 See PACE Resolution 1660 (2009) on the situation of human rights defenders in Council of Europe member states, adopted on 28 April 2009, para. 4.

166 See PACE Resolution 1891 (2012), adopted on 27 June 2012, para. 5.8.

167 In his opinion on Russian NGO legislation, for example, the Council of Europe Commissioner for Human Rights concluded that the continuing use of the term "foreign agent" would lead to further stigmatization of civil society and have a "chilling effect" on the activities of civil society: "[t]he use of the term 'foreign agent' (*inostranniy agent*) is of particular concern to the organisations affected by the implementation of the Law on Foreign Agents, since it has usually been associated in the Russian historical context with the notion of a 'foreign spy' and/or a 'traitor' and thus carries with it a connotation of ostracism or stigma." See Opinion of the Commissioner for Human Rights on the legislation of the Russian Federation on non-commercial organisations in light of Council of Europe standards, CommDH(2013)15, 15 July 2013, <https://wcd.coe.int/ViewDoc.jsp?id=2086667>, paras. 57 and 80. Concerning the negative connotation of the term "foreign agent", see also European Commission for Democracy through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), "Joint Interim Opinion on the Draft Law amending the Law on Non-commercial Organisations and other Legislative Acts of the Kyrgyz Republic", CDL-AD(2013)030, 16 October 2013, para. 47.

168 In Resolution 68/181, for example, the UNGA expressed deep concern about the impact of historical and structural inequalities that also resulted in violations and the abuse of women human rights defenders and the stigmatization of their work "owing to discriminatory practices and those social norms or patterns that serve to condone violence against women or perpetuate practices involving such violence", see UN Doc. A/RES/68/181, preamble.

and sexist attacks online.[169] Youth human rights defenders, including children, are often portrayed as being too young to have an opinion and are denied the right to express their views. The vilification of human rights defenders for their actual or perceived sexual orientation, as well as the disclosure to mass media of sensitive personal information or data in violation of the right to privacy, appears to be another recurring tactic used to discredit human rights defenders.

122. The right to privacy as set out in Article 17 of the ICCPR also includes the protection against unlawful attacks on one's reputation and honour.[170] States Parties to the Covenant are therefore under an obligation to protect human rights defenders from such attacks whether, as the UN Human Rights Committee has pointed out, they emanate from state authorities or from natural or legal persons.[171] However, as the Committee has also stressed, while it may be legitimate to restrict freedom of expression in order to protect the right under Article 17, such restrictions must be applied with care.[172] In particular, they must be firmly in line with international standards on freedom of expression to ensure that this right is not unduly curtailed, and they must not be abused to deprive anyone of the right to defend human rights.

123. It has been reported that, in a number of participating States, smear campaigns against human rights defenders are orchestrated directly by state authorities or officials, or by state-owned media. They are also often driven by non-state actors, including aggressive nationalist groups, faith leaders and institutions or private corporations.[173] Such attempts to discredit human rights defenders and their work are sometimes fuelled by derogatory – or even inflammatory – statements made by state officials or political figures in the media, including at the municipal, regional or national levels.

124. Human rights defenders who belong to or are associated with groups that face prejudice and intolerance in society – such as that based on ethnicity, religion, "race", citizenship, gender, disability or any other status – are at particular risk of being targeted by such abuses. The Internet and social networks are increasingly being

169 See Report of the Working Group on the issue of discrimination against women in law and in practice, UN Doc. A/HRC/23/50, 19 April 2013, para. 66. The Working Group, for example, reported an anonymous negative campaign calling for the gang rape of a woman human rights defender, with racist abuse posted in her Wikipedia profile.

170 Unlike the ICCPR, Article 8 of the ECHR does not refer specifically to honour and reputation, but in its jurisprudence the European Court of Human Rights has stated that under certain circumstances the right to protection of one's reputation is covered by Article 8 of the Convention as part of the right to respect for private life. See section on the *Right to private life* below.

171 See UN Human Rights Committee General Comment No. 16, Article 17, "Right to Privacy", 8 April 1988, paras. and 1 and 11.

172 UN Human Rights Committee General Comment No. 34 on Article 19, "Freedom of Expression", UN Doc. CCPR/C/GC/34, 12 September 2011, para. 28.

173 For example, as the UN Special Rapporteur on the situation of human rights defenders has pointed out, human rights defenders working for the human rights of LGBTI people are often subjected to stigmatization and attacks by, inter alia, community and faith leaders or groups and the media. See UN Doc. A/HRC/25/55, 23 December 2013, para. 104.

used to spread and fuel hatred against human rights defenders who belong to or are associated with such groups. Moreover, measures in place to combat incidences of incitement to discrimination, hostility or violence against human rights defenders, where such acts are motivated by intolerance towards a particular social group to which the human rights defender belongs or is associated with, often lack effectiveness.

125. In general, stigmatization and smear campaigns create an atmosphere that provokes verbal or physical attacks against human rights defenders and encourages their harassment and persecution, thereby putting their security at risk.

126. The UN Human Rights Council has urged states "to acknowledge publicly the important and legitimate role of human rights defenders in the promotion of human rights, democracy and the rule of law as an essential component of ensuring their protection, including by respecting the independence of their organizations and by avoiding the stigmatization of their work".[174] The Human Rights Council has invited leaders in all sectors of society and respective communities, including political, social and faith leaders, and leaders in business and media, to express public support for the important role of human rights defenders and the legitimacy of their work.[175]

127. Manifestations by state or non-state actors that meet the threshold of advocacy to hatred on national, racial or religious grounds, and which constitute incitement to discrimination, hostility or violence, must be prohibited by law, as required by Article 20 of the ICCPR.[176] As the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has pointed out, such laws must be carefully construed and applied by the judiciary to ensure that they do not curtail legitimate types of expression in contravention of Article 19 of the ICCPR.[177]

128. In order to combat incitement to national, racial or religious hatred, including when directed against human rights defenders, such laws should be complemented by appropriated awareness-raising and capacity-building measures as recommended,

174 UN Human Rights Council Resolution A/HRC/RES/22/6, preamble.

175 *Op. cit.* A/HRC/RES/22/6, para. 18. Likewise, in its resolution on women human rights defenders the UNGA also invited military leaders to publicly express support for the role of women human rights defenders in particular (see A/RES/68/181, para. 15). Concerning the impact of racist, sexist and other types of bias among representatives of state authorities, including law enforcement agencies and judicial officials, on the political will to condemn, investigate and prosecute instances of threats and violence directed at human rights defenders working on minority rights and gender issues, see also the section on "Criminalization and arbitrary and abusive application of legislation" above.

176 In accordance with their obligation under Article 20 of the ICCPR, OSCE participating States have committed to "take effective measures, including the adoption, in conformity with their constitutional systems and their international obligations, of such laws as may be necessary, to provide protection against any acts that constitute incitement to violence against persons or groups based on national, racial, ethnic or religious discrimination, hostility or hatred, including anti-semitism". See Copenhagen 1990 para. (40.1); see also Geneva 1991.

177 Report of Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/67/357, 7 September 2012, para. 76 and 77.

for example, in the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.[178] Such measures include training and sensitizing the security forces, law enforcement agents and those involved in the administration of justice, as well as human rights education and training on human rights values and principles, including in schools.

129. Furthermore, authorities should ensure that they use currently accepted and non-stigmatizing terminology when referring to certain groups that are marginalized on account of, for example, their ethnicity, religion, "race", citizenship, gender, disability or any other status. To this end, state authorities should consult frequently with human rights defenders on proper, non-biased terminology, and should ensure that such terminology is applied in both written and oral presentations.

130. In line with their OSCE commitments to take strong public positions against hate speech and other manifestations of aggressive nationalism, racism, chauvinism, xenophobia, anti-Semitism and violent extremism, as well as occurrences of discrimination based on religion or belief,[179] state officials and institutions at the national, regional and local levels should publicly disavow any such manifestations against human rights defenders whenever they occur.

131. Stigmatization also leads to marginalization. In general, it also undermines the credibility of human rights work and, as a result, drains the resources and support needed for this work to be successful. Rather than stigmatizing human rights defenders, participating States should actively and constructively engage with human rights defenders and recognize the relevance and importance of their contributions. In recognition of the fact that members and staff of independent NHRIs are also human rights defenders, participating States should, where required, strengthen their mandate in accordance with the Paris Principles and enable them to effectively reach out to other human rights defenders to stimulate their engagement in public debates. They should also give due consideration to the recommendations and views of independent NHRIs and other human rights defenders, even if these are critical of the government.

132. While the work of human rights defenders often involves criticism of government policies and actions, governments should not see such criticism as negative. "The principle of allowing room for independence of mind and free debate on a government's policies and actions is fundamental, and is a tried and tested way of establishing a better level of protection of human rights. Human rights defenders can assist governments in promoting and protecting human rights. As part of

178 "Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence", Conclusions and recommendations emanating from the four regional expert workshops organized by OHCHR, in 2011, and adopted by experts in Rabat, Morocco on 5 October 2012, <http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf>, pp. 7-8.

179 Document of the Tenth Meeting of the Ministerial Council (Porto 2002), para. 8.

consultation processes they can play a key role in helping to draft appropriate legislation, and in helping to draw up national plans and strategies on human rights. This role too should be recognized and supported."[180]

III. A SAFE AND ENABLING ENVIRONMENT CONDUCIVE TO HUMAN RIGHTS WORK

D. Freedom of opinion and expression and of information

133. In addition to Article 19 of the Universal Declaration of Human Rights (UDHR), a number of international and regional human rights treaties enshrine the right to freedom of opinion and expression, including the ICCPR,[181] the ECHR,[182] the ACHR[183] and the FCNM[184]. According to the UDHR, "[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

134. Participating States have committed themselves "to facilitate the freer and wider dissemination of information of all kinds, to encourage co-operation in the field of information and the exchange of information with other countries."[185] They have also reaffirmed that "everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."[186] The central role of freedom of expression has also been reiterated as "a fundamental human right and a basic component of a democratic society."[187] Participating States, moreover, have acknowledged the importance of the free flow of information,[188] as well as the important role of a free media.[189]

180 "Ensuring Protection - European Union Guidelines on Human Rights Defenders", <http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesDefenders.pdf>, para. 5. The Guidelines were adopted initially in 2004 and revised in 2008.

181 ICCPR, Article 19.

182 ECHR, Article 10.

183 Article 13, American Convention of Human Rights. The Inter-American Commission on Human Rights Declaration of Principles on Freedom of Expression approved by the Commission in October 2000 provides further guidance on the interpretation of Article 13 of the American Convention, see: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=26&lID=1>.

184 FCNM, Article 7.

185 Helsinki 1975, "Co-operation in Humanitarian and Other Fields".

186 Copenhagen 1990, para. 9.1.

187 Budapest 1991, "Decisions: VIII. The Human Dimension", para. 34.

188 Istanbul 1999, "Charter for European Security: III. Our Common Response", para. 26.

189 Astana 2012, para. 6.

135. As the UN Human Rights Committee has pointed out, freedom of opinion and expression, which includes the right to seek, receive and impart information, is essential for any society and constitutes the bedrock of every free and democratic state.[190] Furthermore, the Committee has stated that "[f]reedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights."[191] In other words, the enjoyment of the right to freedom of opinion and expression is indispensable for human rights defenders to be able to carry out their activities in promoting and protecting human rights. Accordingly, Article 6 of the UN Declaration on Human Rights Defenders reaffirms the right of individuals to know, seek, obtain, receive and hold information about human rights; to freely publish, impart or disseminate views, information and knowledge on human rights; to study, discuss, form and hold opinions on the observance of human rights; and to draw public attention to human rights issues.

136. However, in spite of the existence of guarantees in international law, the right of human rights defenders to freedom of opinion and expression and of information continues to be unduly restricted in a number of OSCE participating States. In 2007, the OSCE Parliamentary Assembly urged participating States to address "the remaining challenges, the lack of progress and even set-backs" with respect to the implementation of, inter alia, freedom of expression, which was found to be "under threat from a range of excessively restrictive laws and policies" that negatively affect the working environment of human rights defenders.[192] In recent years, this situation has not substantially changed, but appears to have worsened in some parts of the region. Laws that allow for disproportionate and unreasonable limitations on the grounds of national security (in particular in relation to the fight against terrorism), public health and public morals have been consistently reported as problematic. Similarly, vague laws that can be arbitrarily applied in order to curb freedom of expression have been flagged as a cause for concern in some states. Likewise, in several countries, the defenders of the human rights of

190 UN Human Rights Committee, General Comment No. 34 on Article 19, para. 2.

191 *Ibid*. para. 3.

192 OSCE Parliamentary Assembly Resolution on strengthening OSCE engagement with human rights defenders and national human rights institutions, para. 17, in "Kyiv Declaration and Resolutions adopted at the sixteenth annual session", Kyiv, 5 to 9 July 2007, pp. 28-30, <http://www.oscepa.org/publications/declarations/2007-kyiv-declaration/250-kyiv-declaration-english/file>.

LGBTI persons have been prevented from conducting their activities on the premise of protecting public morals and shielding minors from harm.[193]

137. Participating States should review their legislative frameworks to ensure their full compliance with international standards and OSCE commitments on freedom of opinion and expression, including the right to seek, receive and impart information. More specifically, they should ensure that any limitations on these rights comply strictly with the principles of legality, necessity and proportionality. In doing so, they should pay particular attention to eliminating vague provisions and loopholes that affect predictability in the application of the law and are thus incompatible with the principle of legality. Similarly, provisions that allow restrictions on freedom of opinion and expression on the basis of grounds that are not recognized under international law and that impose disproportionate limitations should be promptly amended or repealed.

138. The UN Human Rights Council has called on states "to ensure that legislation designed to guarantee public safety and public order contains clearly defined provisions consistent with international human rights law, including the principle of non-discrimination, and that such legislation is not used to impede or restrict the exercise of any human right, including freedom of expression".[194] Furthermore, laws that impose restrictions for the purpose of protecting public morals, including on the right to freedom of expression, must not violate the non-discrimination

193 See, for example, Report of the Commissioner for Human Rights of the Council of Europe following his visit to Azerbaijan from 22 to 24 May 2013, CommDH(2013)14, 6 August 2013. In his opinion on legislative amendments in the Russian Federation, the Commissioner found that the language used in the Law on Treason is excessively vague and broad, and could therefore lend itself to selective interpretation and undue restrictions on the exercise of the right to freedom of expression (see "Opinion of the Commissioner for Human Rights on the legislation of the Russian Federation on non-commercial organisations in light of Council of Europe standards", CommDH(2013)15, 15 July 2013, para. 24). Furthermore, the Commissioner found that "[t]he notion of 'political activity' as defined in the Law on Foreign Agents, the use of the term 'foreign agent' and the possibility of applying criminal charges for 'malevolent' non-compliance with the Law interfere with the free exercise of the rights to freedom of association and freedom of expression as defined in the case-law of the European Court of Human Rights" (para. 82). In its 2009 Concluding Observations on the Russian Federation, the Human Rights Committee called on the state party to "revise the Federal Law on Combating Extremist Activity with a view to making the definition of "extremist activity" more precise so as to exclude any possibility of arbitrary application." See UN Doc. CCPR/C/RUS/CO/6, 24 November 2009, para. 24. In its 2012 Concluding Observations on Turkey, the Human Rights Committee expressed concern at "the vagueness of the definition of a terrorist act" and "the high number of cases in which human rights defenders, lawyers, journalists and even children are charged under the Anti-Terrorism Law for the free expression of their opinions and ideas, in particular in the context of non-violent discussions of the Kurdish issue"; see UN Doc. CCPR/C/TUR/CO/1, 13 November 2012, para. 16. In 2011, the then Council of Europe Commissioner Thomas Hammarberg published a comprehensive report on freedom of expression and media freedom in Turkey, in which he called on the authorities to overhaul and amend a number of provisions, including in the criminal code and anti-terrorism legislation, in order to prevent their disproportionate use to limit freedom of expression (see "Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Turkey, from 27 to 29 April 2011", CommDH(2011)25, 12 July 2011). Concerning laws to protect public morals and minors, the Human Rights Committee, for example, raised concern in its Concluding Observations on Lithuania that "certain legal instruments such as the Law on the Protection of Minors against the Detrimental Effect of Public Information (art. 7) may be applied in a manner unduly restrictive of the freedom of expression guaranteed under the Covenant and may have the effect of justifying discrimination against lesbian, gay, bisexual and transgender (LGBT) individuals." See CCPR/C/LTU/CO/3, 31 August 2012, para. 8.

194 A/HRC/RES/22/6, para. 4.

principle.[195] Consequently, as the UN Human Rights Committee has stressed, any such limitations must be understood in light of the universality of human rights and the principle of non-discrimination.[196]

139. In a number of OSCE participating States, defamation laws are reportedly used to silence, and sometimes even imprison, human rights defenders. There have been reports of the abuse of laws on defamation and of laws that aim to protect the honour and reputation of the political leadership to stifle legitimate expression, including online. The UN Human Rights Committee has observed in its jurisprudence that in circumstances of public debate in a democratic society, especially in the media, concerning figures in the political domain, the value placed by the ICCPR upon uninhibited expression is particularly high.[197] Furthermore, the Committee has stated that "States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty."[198] Indeed, as the opinions of the OSCE Representative on Freedom of the Media regularly highlight, there is full agreement among international organizations and institutions that defend freedom of expression that criminal defamation is unnecessary for the protection of reputation and must be abolished in view of its chilling effect on free expression.[199] Together with the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the OAS Special Rapporteur on Freedom of Expression, the OSCE Representative on Freedom

195 UN Human Rights Committee, General Comment No. 34 on Article 19, para. 26.

196 *Ibid*. para. 32.

197 See for example, the views of the Human rights Committee in the case of *Bodrozic v. Serbia and Montenegro,* Communication No. 1180/2003, October 2005, para. 8, referred to above in the section *General Principles*.

198 UN Human Rights Committee, General Comment No. 34 on Article 19, para. 47. In its Concluding Observations, the Committee also regularly recommends that States Parties decriminalize defamation. See, for example, UN Human Rights Committee, "Concluding Observations on Czech Republic", UN Doc. CCPR/C/CZE/CO/3, 22 August 2013, para. 21; "Concluding Observations on Turkey", UN Doc. CCPR/C/TUR/CO/1, 13 November 2012, para. 24; "Concluding Observations on Serbia", UN Doc. CCPR/C/SRB/CO/2, 20 May 2011, para. 21; "Concluding Observations on Uzbekistan", UN Doc. CCPR/C/UZB/CO/3, 7 April 2010, para. 24; "Concluding Observations on Russia", UN Doc. CCPR/C/RUS/CO/6, 24 November 2009, para. 23. See also, for example, the report of the Commissioner for Human Rights of the Council of Europe on his visit to Azerbaijan, CommDH(2013)14, pages 8-10.

199 See, for example, OSCE Representative on Freedom of the Media legal analysis of draft laws in Lithuania, January 2014, available at: <http://www.osce.org/fom/111060>; and in Italy, November 2013, available at: <http://www.osce.org/fom/108108>.

of the Media has repeatedly called for criminal defamation laws to be abolished and replaced, where necessary, with appropriate civil defamation laws.[200]

140. Civil defamation laws can also be abused and instrumentalized to silence speech, for instance, by imposing disproportionately high fines on human rights defenders in defamation cases.[201] In this vein, the UN Human Rights Council has called on states to ensure that "penalties for defamation are limited in order to ensure proportionality and reparation commensurate to the harm done".[202] In addition, such fines should only be imposed after an individual assessment is carried out of the seriousness of the defamatory act and the specific economic situation of the individual, the media outlet or other organization in question, in order to ensure that sanctions do not endanger their functioning or lead to bankruptcy. The threat of excessive sanctions alone can produce a climate of self-censorship and stifle freedom of expression more generally.

141. When reviewing their laws and requisite amendments to bring them in line with international human rights standards, participating States should consult effectively with all stakeholders, including civil society. They should also seek the technical advice of relevant international institutions, including the Office of the OSCE Representative on Freedom of the Media and the Venice Commission, and should fully implement their opinions.

142. Anyone detained or imprisoned for expressing her or his views or opinions, or subjected to other sanctions on the basis of laws that do not meet the strict requirements of international standards on freedom of opinion and expression, should be immediately released, while any other related sanctions that have been applied – such as fines or the confiscation of property – should be overturned. Furthermore, participating States should expressly recognize and reaffirm the right of human rights defenders to openly scrutinize the public policies and actions of the state.

200 "International Mechanisms for Promoting Freedom of Expression, Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression", December 2002, <http://www.osce.org/fom/39838>. See also "Tenth Anniversary Joint Declaration: Ten Key Challenges to Freedom of Expression in the Next Decade", February 2010, <http://www.osce.org/fom/41439>. The Parliamentary Assembly of the Council of Europe (PACE) has also called on member States of the organization to review and, where necessary, amend their defamation laws with a view to removing any risk of abuse or unjustified prosecutions. It also welcomed the efforts of the OSCE Representative on Freedom of the Media in favour of decriminalizing defamation, see Resolution 1577 (2007) and Recommendation 1814 (2007), "Towards decriminalisation of defamation", adopted on 4 October 2007.

201 For example, in its "Concluding Observations on Moldova", the UN Human Rights Committee raised concern at "reports of the use, by politically influential interest groups and individuals, of civil defamation laws against independent journalists. It also notes with concern reports of the prosecution of independent television broadcasters"; see UN Doc. CCPR/C/MDA/CO/2, 4 November 2009, para. 21. In its "Concluding Observations on Tajikistan", it also expressed concern that "defamation lawsuits are filed against media organizations as a means of intimidation" (while signalling appreciation at the removal of defamation articles from the Criminal Code, the Committee simultaneously expressed concern at the existence of penal provisions on libel and insult against the president and insult against government representatives), UN Doc. CCPR/C/TJK/CO/2, 22 August 2013, para. 22.

202 A/HRC/RES/22/6, para. 11(f).

As the UN Human Rights Council has stressed, dissenting views may be expressed peacefully.[203] In its case-law, the ECtHR has consistently reaffirmed that freedom of opinion and expression not only protect the expression of views or ideas that are favourably received, but also those that are critical, while limitations are only permissible in very exceptional cases.[204]

Access to information of public interest and whistleblowers

143. In accordance with Article 19(2) of the ICCPR, the right to freedom of expression includes the "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." The right to carry out human rights monitoring, including trial and assembly monitoring, is a corollary of the right to seek and impart information.

144. Undue restrictions on access to information can inhibit human rights activities in a number of ways. Restrictions on the dissemination of and access to information with the justification of protecting public health or morals can prevent human rights defenders from carrying out advocacy and awareness raising work or providing services to their clients, for example in relation to education concerning maternal and reproductive health or other measures to combat gender-based discrimination. National security is frequently used to justify the over-classification of information, thus limiting access by human rights defenders and other affected parties to information of public interest and creating another obstacle for whistleblowers and investigative journalists trying to bring to light alleged corruption and human rights violations by state actors. Any laws that limit the freedom to seek and impart information beyond what is permissible under international human rights standards and that do not comply with the principles of legality, necessity and proportionality should be promptly repealed or amended.

145. The UN Human Rights Council has called upon states to ensure that "[i]nformation held by public authorities is proactively disclosed, including on grave violations of human rights, and that transparent and clear laws and policies provide for a general right to request and receive such information, for which public access should be granted, except for narrow and clearly defined limitations".[205]

146. Clear and transparent procedures should be put in place to avoid over-classification of documents, unreasonably long time-frames before de-classification and undue

203 A/HRC/RES/22/6, para. 11 (i).

204 See, for example, the ECtHR judgement in the case of *Palomo Sánchez and Others v. Spa*in, Applications nos. 28955/06, 28957/06, 28959/06 and 28964/06, 12 September 2011, which states: "Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'" (para. 53).

205 A/HRC/RES/22/6, para. 11(e).

limitations in accessing historical archives. The sharing and publication of otherwise publicly available information or academic research should not be viewed as unlawful disclosure of state secrets, even when their disclosure into the public domain occurred in violation of secrecy laws.

147. Participating States should adopt legislation to ensure that the general public has access to information held by public bodies. According to the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the "adoption of a national normative framework that objectively establishes the right to access information held by public bodies in the broadest possible terms is crucial to give effect, at the national level, to the right to access information. Legislation should be grounded by the principle of maximum disclosure."[206] The grounds for refusing disclosure should be clearly and narrowly defined; non-disclosure of information should be justified on a case-by-case basis, and exceptions should only apply where the risk of substantial harm to the protected interest is greater than the overall public interest in having access to the information. Furthermore, the legislative framework should follow the principle that public authorities generally have an obligation to publish information, a principle which is subject only to reasonable limitations, rather than merely granting access to information upon request.[207] Accordingly, public authorities at the national, regional and local levels should be required to regularly publish and proactively disseminate, among other things, data related to their activities, including on their budgets and expenditure, and specific information on human rights matters should also be made easily accessible, not only on demand. In addition, participating States should also take appropriate legislative and other steps to ensure that information held by non-state actors – such as private companies – that is linked to a public interest is made available to the public or can be accessed as appropriate and is subject only to reasonable limitations. PACE has stated that "business enterprises, including private military and security companies, have the responsibility to disclose information in respect of situations, activities or conduct that may reasonably be expected to have an impact on the enjoyment of human rights".[208]

148. Concerning information about gross human rights violations, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has emphasized that such information must not be withheld on

206 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/68/362, 4 September 2013, para. 98.

207 *Ibid*. para. 76, which lists core principles and guidelines for the design and implementation of national laws on access to information; and para. 99. See also PACE Resolution 1954 (2013) cited below, which highlights in paragraph 9 a number of key principles that should be taken into account by states in modernizing their legislation and practice concerning access to information. These are based on the "Tshwane Principles" (Global Principles on National Security and the Right to Information), which were adopted by a large assembly of experts from international organizations, civil society, academia and national security practitioners. PACE expressed its support for the principles and called on Council of Europe member states to take them into account when modernizing their legislation and practice in this field.

208 PACE Resolution 1954 (2013), "National security and access to information", adopted on 2 October 2013, para. 9.

grounds of national security. "When limitations are deemed absolutely necessary, the State has the burden of proof in demonstrating that the exceptions are compatible with international human rights law. Information regarding other violations of human rights must be subject to a high presumption of disclosure and, in any event, may not be withheld on national security grounds in a manner that would prevent accountability, or deprive a victim of access to an effective remedy."[209] Likewise, PACE has reaffirmed that "information concerning the responsibility of State agents who have committed serious human rights violations such as murder, enforced disappearance, torture or abduction does not deserve to be protected as secret. Such information should not be shielded from judicial or parliamentary scrutiny under the guise of "state secrecy", and that "[i]nformation about serious violations of human rights or humanitarian law should not be withheld on national security grounds in any circumstances."[210]

149. PACE has also called on states to review their legislation concerning the protection of whistleblowers, while noting, among other things, that whistleblowing legislation should be comprehensive and should focus on providing a safe alternative to silence.[211] Similarly, the OSCE Representative on Freedom of the Media, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the OAS Special Rapporteur on Freedom of Expression have all called for the protection of whistleblowers against legal, administrative or employment-related sanctions if they act in "good faith" when releasing information on violations of the law, on wrongdoing by public bodies, on a serious threat to health, safety or the environment, or on a breach of human rights or humanitarian law.[212] They have stated that the term "whistleblower" includes those releasing confidential or secret information on such matters despite being under an official or other obligation to maintain confidentiality or secrecy. While noting that government officials or persons with a connection to the state who have a legal obligation to ensure confidentiality (i.e., whistleblowers) should be afforded such protection, the UN Special Rapporteur has also stated that other individuals, including journalists, other media personnel and civil society representatives who receive, possess or disseminate classified information because they believe it is in

209 A/68/362, para. 106.

210 See Resolution 1954 (2013), paras. 6 and 9.6.

211 PACE Resolution 1729 (2010), "Protection of 'whistle-blowers'", adopted on 29 April 2010, paras. 6.1 and 6.2. According to PACE, such legislation should protect anyone who, in good faith, makes use of existing internal whistleblowing channels from any form of retaliation (including unfair dismissal, harassment or any other punitive or discriminatory treatment). Where such internal channels do not exist or are not effective, external whistleblowing, including through the media, should likewise be protected. Setting out principles guiding the design and implementation of national laws on access to information, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression specifically recalled that national laws on the right to information should provide protection for whistleblowers. See A/68/362, para. 76 (i).

212 See "International Mechanisms for Promoting Freedom of Expression, Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression", 6 December 2004, <http://www.osce.org/fom/38632>.

the public interest, should not face liability if they do not place anyone in an imminent situation of serious harm.[213]

150. The UN Human Rights Council has recognized that new forms of communication, including the dissemination of information online, can serve as important tools for human rights defenders to promote and strive for the protection of human rights. Furthermore, it has underlined that "access to and use of information technologies and the media of one's choice, including radio, television and the Internet, should be promoted and facilitated at the national level, between States and at the international level as an integral part of the enjoyment of the fundamental rights to freedom of opinion and expression".[214] However, there have been reports that websites have been blocked in some participating States with the aim of restricting the sharing of and access to information that is perceived to be critical of the authorities, or of information that is considered controversial and described as, for example, posing risks to public health. In some participating States, access to websites can be partially restricted or fully blocked without effective safeguards against the abuse of such measures, including independent and impartial judicial oversight. Similarly, where such safeguards are not in place, authorities can often obtain communications data and other information from Internet Service Providers concerning, for example, the identity of individuals posting online content. Such information can then be used to silence them.

151. Measures should be taken to prevent the use of non-state actors, including Internet service providers, to restrict legitimate activities in defending human rights. As a basic rule, participating States should not require Internet intermediaries such as Internet service providers and social media companies to disclose the identity of bloggers or users of social media to any public authority. Where it has been ascertained by the competent authorities that the contents that have been posted clearly fall outside of what is protected by international standards on freedom of opinion and expression, for example, because it may constitute incitement to hatred or violence, investigation and possible prosecution of those responsible must fully respect international standards on due judicial process.

Freedom of the media

152. OSCE participating States have reaffirmed "the right of the media to collect, report and disseminate information, news and opinions", specifying that "[a]ny restriction in the exercise of this right will be prescribed by law and in accordance with international standards" and expressly recognizing the key importance of an independent media "to a free and open society and accountable systems of government

213 A/68/362, paras. 68, 107 and 108. See also the UN Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression and the Special Rapporteur for freedom of expression of the Inter-American Commission on Human Rights, "Joint Declaration on surveillance programs and their impact on freedom of expression", para. 15.

214 A/HRC/RES/22/6, preamble and para. 7.

and […] in safeguarding human rights and fundamental freedoms”.[215] In addition, they have reaffirmed the importance of independent media and committed themselves to taking all necessary steps to ensure that the basic conditions for a free and independent media are in place.[216]

153. In order for the media to fulfil its functions in a democratic society, the media environment should be pluralistic and open to the involvement of a range of actors in public debates and reporting. In this vein, the UN GA has acknowledged “that journalism is continuously evolving to include inputs from media institutions, private individuals and a range of organizations that seek, receive and impart information and ideas of all kinds, online as well as offline, […] thereby contributing to shape public debate”.[217] Similarly, the UN Human Rights Committee has pointed out that “[j]ournalism is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere.”[218] In order to safeguard and promote greater respect for human rights, the media environment should enable human rights defenders to access and participate in public debates, irrespective of whether they are professional journalists, otherwise engage in reporting on human rights issues or contribute to related public debates. This is also important with a view to strengthening the legitimacy and thus also the protection of human rights defenders.

154. Media laws, policies and practices should facilitate an open and pluralistic media system, and one which is conducive to the promotion of human rights, is accessible and contributes to the protection of human rights defenders. Media organizations should be encouraged to develop guidelines, codes of ethics or other standards and self-regulatory mechanisms to that effect. “The importance of effective self-regulatory mechanisms, such as press councils and ombudspersons”, as well as the need for such mechanisms to “be established in a consultative and inclusive process and (…) be independent from government interests”[219] is generally acknowledged. Such self-regulatory measures should reflect the responsibility of the media in the field of the protection of human rights and of human rights defenders.

215 Moscow 1991, para. 26. In 1997, participating States decided to establish the Office of the OSCE Representative on Freedom of the Media, recognizing the need to better protect freedom of expression and of the media and to strengthen the implementation of relevant OSCE principles and commitments in this field. See Decision No. 193 of the Permanent Council, 5 November 1997, “Establishment of the Office of the OSCE Representative on Freedom of the Media, Mandate of the OSCE Representative on Freedom of the Media”, *Commitments: Freedom of the media, Freedom of expression, Free flow of information* – 1975-2012, 2013, <http://www.osce.org/fom/99565?download=true>, p. 32.

216 Istanbul 1999, “Charter for European Security: III. Our Common Response”, para. 26.

217 See UNGA Resolution 68/163, “The safety of journalists and the issue of impunity”, UN Doc. A/RES/68/163, adopted on 18 December 2013, preamble.

218 UN Human Rights Committee, General Comment No. 34 on Article 19, para. 44.

219 “15th Central Asia Media Conference: Reflecting on OSCE media freedom commitments”, Bishkek, Kyrgyzstan, 27-28 June 2013, 15th Anniversary Declaration, para. 13, <http://www.osce.org/fom/104110>.

155. Participating States have an obligation to refrain from any direct or indirect censorship of the media, including online media, or other forms pressure intended to silence journalists who defend human rights, as well as others who engage in reporting on human rights issues or otherwise contribute to related public debates. They should also put in place conditions to ensure that private actors, such as influential media corporations or influential groups, do not attempt to censor or put pressure on human rights defenders. As an essential component of practically safeguarding freedom of expression and information, OSCE participating States have undertaken to "make further efforts to facilitate the freer and wider dissemination of information of all kinds, to encourage co-operation in the field of information and to improve the working conditions for journalists."[220] In particular, "[r]ecalling that the legitimate pursuit of journalists' professional activity will neither render them liable to expulsion nor otherwise penalize them, [they committed to refraining] from taking restrictive measures such as withdrawing a journalist's accreditation or expelling him because of the content of the reporting of the journalist or of his information media".[221] Appropriate steps should also be taken to protect from undue interference individuals who are not professional journalists but who contribute to public debates, to ensure that they can exercise their right to freedom of opinion and expression when reporting on human rights issues or contributing to related public debates.

156. As such, participating States should "promote a safe and enabling environment for journalists to perform their work independently and without undue interference, including by means of: (a) legislative measures; (b) awareness-raising in the judiciary and among law enforcement officers and military personnel, as well as among journalists and in civil society, regarding international human rights and humanitarian law obligations and commitments relating to the safety of journalists; (c) the monitoring and reporting of attacks against journalists; (d) publicly condemning attacks; and (e) dedicating the resources necessary to investigate and prosecute such attacks".[222] It is particularly important to ensure that journalists who contribute to the protection and realization of human rights are effectively protected from attacks and other abuses carried out both by state and non-state actors, including violent extremist and organized crime groups.

E. Freedom of peaceful assembly

157. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that "holding peaceful assemblies is a legitimate and powerful means to make calls for democratic change; greater respect for human rights [...] and accountability for human rights violations and abuses".[223] In this regard,

220 Vienna 1989, "Co-operation in Humanitarian and Other Fields", para. 34.

221 *Ibid*. para. 39.

222 A/RES/68/163, para. 6.

223 A/HRC/23/39, 24 April 2013, para. 80. The Special Rapporteur referred to the "Arab Spring" and "occupy movement" when making this statement.

he has emphasized the utmost importance of the ability to hold peaceful assemblies to the work of civil society actors, including human rights defenders, as it enables them to publicly voice their message and contribute to the realization of the right(s) they are defending.[224]

158. The right to freedom of peaceful assembly is enshrined in a number of international human rights instruments, including in Article 20 of the UDHR, Article 21 of the ICCPR, Article 11 of the ECHR, Article 15 of the ACHR and Article 7 of the FCNM. The UN Declaration on Human Rights Defenders also reaffirms this right and places a special emphasis on its importance for the purpose of promoting and protecting human rights and fundamental freedoms at the national and international levels (Article 5).

159. Article 21 of the ICCPR stipulates that no restrictions may be placed on the exercise of the right to freedom of peaceful assembly other than those imposed in conformity with the law, and which are necessary in a democratic society in the interests of national security, public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.[225] All limitations must strictly comply with the principles of legality, necessity and proportionality. Furthermore, they must be compatible with other fundamental human rights norms, such as the prohibition of discrimination, and must not be applied in a manner that would impair the essence of the right to freedom of peaceful assembly.[226] As reaffirmed by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, states should provide a detailed and timely written explanation for the imposition of any restriction, and should ensure the possibility of subjecting that restriction to an independent, impartial and prompt judicial review.[227]

160. OSCE commitments provide that "everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards."[228] Furthermore, the OSCE/ODIHR-Venice Commission Guidelines on

224 *Ibid*. para. 43.

225 Article 11 of the ECHR states that this provision should not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state. However, any such restrictions must also be prescribed by law, be necessary and proportionate and human rights defenders who belong to these groups should therefore also enjoy the right to freedom of assembly without undue limitation.

226 See UN Human Rights Committee General Comment No. 31, "Nature of the General Legal Obligation Imposed on States Parties to the Covenant", UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 6. As regards restrictions to protect morals, the UN Human Rights Committee has emphasized that the concept of morals derives from many social, philosophical and religious traditions. Therefore, limitations for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition but must be understood in the light of the universality of human rights and the principle of non-discrimination. See General Comment No. 34 on Article 19, UN Doc. CCPR/C/GC/34, 12 September 2011, para. 32. See above section on *General Principles - Legality and proportionality of limitations of fundamental rights in connection with human rights work.*

227 A/HRC/23/39, 24 April 2013, para. 81(c).

228 Copenhagen 1990, para. 9(2).

Freedom of Peaceful Assembly provide that "as a fundamental right, freedom of peaceful assembly should, insofar as possible, be enjoyed without regulation".[229] It is the state's obligation to facilitate and protect peaceful assemblies and to ensure that this freedom is not subject to undue bureaucratic regulation.[230]

161. Despite these and other guarantees, human rights defenders continue to face legal and administrative impediments to the full realization of this right in many participating States. For example, in some participating States, national legislation related to freedom of assembly is of a general nature and lacks clear and complete statements of relevant procedures and principles. In practice, this often results in arbitrary and overly restrictive interpretations and applications of relevant provisions. In a number of participating States, national legislation relating to freedom of assembly explicitly grants excessive power to the authorities to regulate assemblies, including their content, manner, time and place of conduct, and imposes burdensome and far-reaching responsibilities on the organizers of assemblies. Furthermore, domestic laws in some participating States require that organizers seek the authorization of the state prior to holding a peaceful assembly. Sanctions imposed for non-compliance with such regulations are often disproportionate and seek to discourage individuals from exercising their right to freedom of peaceful assembly.

162. **Legislative and administrative framework:** Participating States should ensure that their legislation and practices relating to freedom of assembly are fully consistent with international human rights standards and OSCE commitments. Relevant national legislation should clearly articulate the main principles upon which the protection of this right should be based. These include the principle that the right to freedom of peaceful assembly is a fundamental right, and one which is crucial to a democratic society; the presumption in favour of holding assemblies; the state's positive obligation to facilitate and protect peaceful assemblies; and the principles of legality, proportionality, non-discrimination and good administration.[231] Laws and practices which do not conform to these principles and international human rights standards should be promptly amended or repealed.

163. Participating States should hold meaningful, non-discriminatory consultations with civil society, including human rights defenders, and should ensure their free and active participation in discussions of relevant legislative initiatives. The participation of human rights defenders in consultations should be arranged at the earliest stage possible to ensure that their input can be fully utilized. Authorities involved in drafting or reviewing relevant legislation, as well as those involved in implementing it – including national, regional and local authorities, law enforcement and the judiciary – are encouraged to apply the OSCE/ODIHR-Venice Commission

229 OSCE/ODIHR-Venice Commission, *Guidelines on Freedom of Peaceful Assembly,* 2nd edition, (Warsaw/Strasbourg, 2010), para. 2.1.

230 *Ibid*. para. 2.2.

231 *Ibid*. para. 2.1-2.6.

Guidelines on Freedom of Peaceful Assembly. Furthermore, as stipulated in the Guidelines, "domestic laws should also be drafted, interpreted and implemented in conformity with relevant international and regional jurisprudence and good practice".[232] As such, participating States are encouraged to seek the expertise of international bodies that specialize in legislative review, such as OSCE/ODIHR and the Venice Commission of the Council of Europe, and to implement opinions and recommendations of these and other human rights mechanisms, including the Council of Europe Commissioner for Human Rights, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association and the UN Special Rapporteur on the situation of human rights defenders.

164. **Application of legal regulations and procedural issues:** Participating States should actively promote the full enjoyment of the right to freedom of peaceful assembly by human rights defenders. Assemblies should be presumed permissible unless they constitute acts that are expressly prohibited by laws, which in turn must be in full compliance with international standards. The exercise of this right should not be subject to prior authorization by the authorities. Instead, prior notification of the assembly should suffice to enable the authorities "to prepare and make adequate arrangements that might be necessary in order to ensure the maintenance, protection and promotion of the right of assembly".[233] The notification procedure, where required, should be simple and expeditious. It should narrowly define when and how the authorities can prevent an assembly from taking place to ensure that it does not become a de facto authorization procedure. If the authorities do not promptly present any objections to a notification, the organizers of a public assembly should be able to proceed with their activities according to the terms presented in their notification and without restriction.[234]

165. In practice, however, some participating States place considerable limitations on the right to freedom of peaceful assembly by imposing unwarranted restrictions and employing various tactics to obstruct assemblies. As a result, human rights defenders seeking to organize public meetings, marches and demonstrations in favour of equal rights for minority or marginalized groups or for conveying messages that are critical of the authorities are often denied permission or otherwise

232 *Ibid*. para. 12.

233 OSCE/ODIHR-Venice Commission, "Joint opinion on the Draft Law on Peaceful Assemblies of the Kyrgyz Republic", CDL-AD (2010)050, para. 13.

234 OSCE/ODIHR-Venice Commission Guidelines, para. 4.1.

prevented from holding such events.[235] Content-based restrictions imposed only because assemblies reflect certain views perceived as controversial in society or express disapproval of the authorities are incompatible with relevant international standards and principles.[236] The same applies to limitations that are not formally based on the content of the assembly, but which are imposed because the organizers are perceived to be critical of the authorities or associated with issues that are controversial in society. In line with international human rights standards, restrictions on the content of any message expressed during an assembly should be subject to a high threshold and should only be imposed if there is an imminent threat of violence.[237]

166. Similarly, restrictions on the time, place and manner of a peaceful assembly should be applied only in full compliance with international standards and the principles of legality, necessity, proportionality and non-discrimination. Participating States should put in place adequate mechanisms and procedures to ensure that the right to freedom of peaceful assembly can be enjoyed in practice, including by assessing and addressing security risks. Before taking a final decision on any legitimate restriction on an assembly, the authorities should inform the organizers and give them an opportunity to express their views in that regard. The authorities should also provide reasonable alternatives to ensure that a peaceful assembly is held within the "sight and sound" of the target audience.[238]

167. Such reasonable alternatives are reportedly not always offered in a number of participating States, where the authorities refer assemblies to remote locations that are difficult or impossible to reach by public transport and which prevent human rights defenders from voicing their concerns to the target audience. Reasons

235 See, for example, the judgement of the European Court of Human Rights in the case of *Alekseyev v. Russia* (Applications nos. 4916/07, 25924/08 and 14599/09, 21 October 2010) about the continued ban of LGBT Pride Marches in Moscow in 2006, 2007 and 2008. The authorities had enforced the ban by dispersing unauthorized events and found participants who had breached the ban guilty of administrative offences. The authorities claimed that the ban was necessary because of potential breaches of public order and violence against the participants and for the protection of morals. In its judgement the ECtHR reiterated that Article 11 of the ECHR protects demonstrations that may annoy or cause offence to persons opposed to the ideas or claims that it is seeking to promote (para. 73). Furthermore, it stated: "If every probability of tension and heated exchange between opposing groups during a demonstration were to warrant its prohibition, society would be faced with being deprived of the opportunity of hearing differing views on any question which offends the sensitivity of the majority opinion." See also the judgement in the case of *Bączkowski and Others v. Poland* (Application no. 1543/06, 3 May 2007), in which the Court found the banning of an LGBT pride parade in Warsaw in 2005, violated the right to freedom of assembly as well as the right to a remedy and the prohibition against discrimination.

236 See, for example, the UN Human Rights Committee "Concluding Observations on Bosnia and Herzegovina", UN Doc. CCPR/C/BIH/CO/2, 13 November 2012, para. 19. The Committee expressed concern at reports of restrictions of assemblies in Prijedor town in May 2012, where the Mayor prohibited commemorations for the 20th anniversary of mass atrocities in Omarska. The Committee also expressed concern at reports of public announcements that any failure to comply with the prohibition of the use of the term "genocide" when referring to the crimes committed in Omarska would be prosecuted. The Committee called on the state party to comply with the strict requirements of Covenant concerning freedom of assembly and expression, and to investigate the legality of the prohibitions to conduct commemorations in the town of Prijedor.

237 *Ibid*. para. 3.3.

238 A/HRC/23/39, para. 83(c).

frequently cited to justify restrictions include disruptions to pedestrian and vehicular traffic and to commercial or other daily activities. It should be underscored that "location is one of the key aspects of freedom of assembly", and that participants in public assemblies have as much of a claim to use central and accessible public spaces, such as parks, squares, streets, roads, avenues and sidewalks, for a reasonable period as anyone else.[239]

168. Such practices to keep assemblies away from the "sight and sound" of their target audience are sometimes coupled with tactics to obstruct the exercise and full enjoyment of the right to freedom of peaceful assembly, including, but not limited to, blocking transport routes for people to reach the assembly, stopping, detaining or intimidating participants on their way to the assembly, or restricting access to the Internet and mobile telephone services that organizers and participants use to co-ordinate prior and during an assembly. Participation in assemblies must not be obstructed, nor should the organizers be discouraged from holding their assemblies.

169. The blanket application of legal restrictions on assemblies – for example, banning all demonstrations from being held at certain times, in particular locations or in public spaces that are suitable for holding assemblies – would fail the proportionality test, as such restrictions do not take account of the circumstances of each individual case.[240] Participating States should therefore remove such prohibitions from law and practice and give due consideration to the specific circumstances of each assembly.

170. Pursuant to Article 12 (2) of the Declaration on Human Rights Defenders, participating States "shall take all necessary measures to ensure protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action" as a consequence of the legitimate exercise of the right to freedom of peaceful assembly. The right to freedom of peaceful assembly on issues that are perceived to challenge traditional values, or which aim to contest extreme political views must be equally protected. Such assemblies include, but are not limited to, demonstrations to counter racism, xenophobia and intolerance, for example, towards persons belonging to national minorities, ethnic or religious groups, Roma and Sinti, refugees and migrants and LGBTI pride marches. As emphasized by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, "the ability to hold such assemblies has proven particularly crucial for groups most at risk of violations and discrimination enabling them to address their often desperate plight in a meaningful manner".[241] Furthermore, it should be reiterated that individuals and groups, including reg-

239 "Opinion on the Act on the Regulation of Public Meetings, Marches, Rallies, Demonstrations and Assemblies" in Tunisia, OSCE/ODIHR, FOA-TUN/218/2012, para. 56.

240 OSCE/ODIHR-Venice Commission Guidelines, para. 43.

241 A/HRC/23/39, 24 April 2013, para. 80.

istered and unregistered associations, can enjoy and exercise this fundamental right and should be equally protected by the state in doing so. The obligation of participating States to guarantee the right to freedom of peaceful assembly applies to the state as a whole. As such, central government authorities must ensure that municipal and other authorities also comply with this obligation, and in the case of federal states, that all federal authorities are bound by this obligation.

171. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has stressed the important role of new information and communications technologies, including the Internet and mobile telephone services, in enabling and facilitating the enjoyment of freedom of assembly and association rights.[242] Moreover, the UN Human Rights Council has underlined the obligation of States "to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline [...]".[243] In line with this, participating States should ensure that human rights defenders can freely use such technologies as tools for organizing assemblies, disseminating information about forthcoming events and performing other related activities. The authorities should cease practices and regulations that clamp down on the access to and the use of these tools by human rights defenders. Any restriction on such access or use should be reviewed by a competent court.[244]

172. **Spontaneous, simultaneous and non-notified assemblies:** Participating States should facilitate and ensure the protection of various types of peaceful assemblies, including spontaneous and simultaneous assemblies. Spontaneous assemblies are often triggered by an event, and therefore meeting the requirement of an advance notification, if there is one, may not be feasible. Furthermore, such events are often gatherings with no prior advertising or invitation and no identifiable organizers, which also make advance notification impracticable. Nevertheless, spontaneous assemblies of a peaceful nature should be fully protected, recognized in law and regarded "as an expectable (rather than exceptional) feature of a healthy democracy".[245] Likewise, simultaneous assemblies should also be allowed, protected and accommodated. "If this is not possible (due to, for example, lack of space), the parties should be encouraged to engage in dialogue to find a mutually satisfactory resolution."[246] Where counter-demonstrations occur, the authorities should take all necessary measures to ensure that the assemblies occur within the sight and sound of their target audiences. The emphasis, however, "should be placed on the state's duty to prevent disruption of the main event where counter-demonstrations are organized".[247]

242 A/HRC/20/27, 21 May 2012, paras. 32 and 84(k).

243 A/HRC/RES/24/5, 8 October 2013.

244 A/HRC/23/39, para. 83(e).

245 OSCE/ODIHR-Venice Commission Guidelines, para. 128.

246 *Ibid*. para. 122.

247 *Ibid*.

173. Human rights defenders participating in non-notified assemblies should not be subject to criminal or administrative sanctions resulting in fines or imprisonment solely for their participation in such assemblies.[248] Sanctions for failing to comply with formal legal requirements for assemblies should be proportionate to the gravity of the offense and should be applied in a non-discriminatory manner. Liability for failing to adhere to any relevant provision of the law should be clearly stipulated. Participating States should ensure that all those charged with administrative or other offences in connection with the exercise of the right to freedom of peaceful assembly enjoy full due process protections, including immediate access to a lawyer of their choice and adequate time to prepare their defence. Human rights defenders who organize peaceful assemblies should not be held responsible for unlawful acts of other participants at an assembly if they did not cause or otherwise participate in the conduct of those acts.

174. **Policing and use of force:** Law enforcement officials should avoid the use of force during assemblies or, if this is not practicable, restrict such force to the minimum extent necessary.[249] The force applied should target only those participants who engage in violence and should be strictly proportionate. A peaceful assembly does not automatically turn into a non-peaceful one if a small group of participants, or non-participants or agents provocateurs, use violence.[250] Law enforcement officers policing the assembly must react to such acts in a targeted way without compromising the exercise of the right to freedom of assembly by peaceful participants, for example, by forcibly dispersing an otherwise peaceful assembly.

248 A/HRC/20/27, para. 29.

249 According to the UN Code of Conduct for Law Enforcement Officials, law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty. This means that the use of force should be exceptional and under no circumstances go beyond what is reasonably necessary. See UN "Code of Conduct for Law Enforcement Officials", Adopted by UN General Assembly Resolution 34/169 of 17 December 1979, Article 3. The UN Basic Principles on the Use of Force and Firearms by Law enforcement Officials (hereafter the UN Basic Principles) further stipulate that law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force, and that they may use force only if other means remain ineffective. When the lawful use of force is unavoidable, law enforcement officials shall, among other things, exercise restraint, minimize damage and injury, and ensure that assistance and medical aid are rendered to any injured or affected person at the earliest possible moment ("UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials", Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, principles 4 and 5). While these principles generally also apply to the use of firearms, the UN Basic Principles further specify that the use of firearms against persons should never be permissible except in self-defence or defence of others to protect life or to prevent serious bodily harm (principle 9). As regards excessive use of force see also, for example, UN Committee against Torture, "Concluding Observations on Greece" (UN Doc. CAT/C/GRC/CO/5-6, 27 June 2012, para. 11), where the Committee expressed concern at continuing allegations of excessive use of force by law enforcement officials, often related to policing of demonstrations and crowd control. The Committee urged the state party to take immediate and effective measures to ensure that law enforcement officials only use force when strictly necessary and to the extent required for the performance of the duty. See also "Concluding Observations on Canada" (UN Doc. CAT/C/CAN/CO/6, 25 June 2012, para. 22), where the Committee expressed concern about reports of excessive use of force by law enforcement officers often in the context of crowd control at federal and provincial levels. The Committee recommended the state party to strengthen its efforts to ensure that these allegations are promptly and impartially investigated, and that those responsible for such violations are prosecuted.

250 OSCE/ODIHR-Venice Commission Guidelines, para. 164.

175. The UNGA and the Human Rights Council have repeatedly reiterated that no one should be subjected to excessive and indiscriminate use of force in the context of peaceful protests.[251] Under all circumstances, law enforcement authorities must refrain from the excessive and indiscriminate use of force that fails to differentiate between peaceful demonstrators, journalists reporting from the event, assembly monitors or by-standers and those responsible for violent acts. The indiscriminate use of force, for example, in reaction to sporadic violence during an assembly or violent acts by a small group of protesters, can lead to the escalation of tensions and result in further violence. Negotiation and/or mediation to de-escalate conflicts should always be given precedence over the use of force.[252] To prevent the unnecessary and disproportionate use of force, domestic law should contain clear rules that set out the circumstances justifying the use of force, as well as the level of force acceptable to deal with various threats.[253] The Council of Europe Commissioner for Human Rights has also recommended that states should set clear rules for the use of force in the context of demonstrations.[254]

176. All allegations of excessive or indiscriminate use of force and other misconduct by law enforcement officers in connection with the policing of assemblies must be effectively investigated, and anyone responsible for misconduct must be brought to justice.[255] There must be no impunity for such acts. In accordance with relevant human rights standards and OSCE commitments, governments shall ensure that

251 See the UNGA "Resolution on the Promotion of the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms", UN Doc. A/RES/66/164, para. 6; UNGA "Resolution on the protection of women human rights defenders", UN Doc. A/RES/68/181, 18 December 2013, para. 8; Human Rights Council "Resolution on the promotion and protection of human rights in the context of peaceful protests", A/HRC/RES/19/35, adopted on 23 March 2012, para. 6; and the Human Rights Council "Resolution on the protection of human rights defenders", A/HRC/RES/22/6, para. 6.

252 See OSCE/ODIHR-Venice Commission Guidelines, paras. 5.4 and 5.5, and for further details pp. 75-89.

253 *Ibid*. para. 171.

254 See, for example, the report of the Commissioner on his visit to Turkey in which he recommended the authorities to adopt clearer rules for the use of force in the context of demonstrations, including in particular with respect to the use of tear gas and projectile-firing weapons, and better safeguards against ill-treatment and violations of the right to freedom of assembly by law enforcement officials. See Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Turkey, from 1 to 5 July 2013, CommDH(2013)24, 26 November 2013.

255 For example, to investigate allegations of excessive use of force in the context of protests, the UN Human Rights Committee has recommended the Russian Federation to "establish an independent body with authority to receive, investigate and adjudicate all complaints of excessive use of force and other abuses of power by the police"; see "Concluding Observations on Russia", UN Doc. CCPR/C/RUS/CO/6, 24 November 2009, para. 25. Following his visit to Georgia, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association recommended the authorities to "[s]eriously consider establishing an independent commission to thoroughly investigate the events of 26 May 2011, in an inclusive, transparent and participatory manner, and with the involvement of all stakeholders, including opposition political parties, non-governmental organizations, trade unions, activists, human rights defenders and members of civil society"; see Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai , Addendum, Mission to Georgia, UN Doc. A/HRC/20/27/Add.2, 8 June 2012, para. 91 (e). For more details about the requirements of effective investigations see the section on *Impunity and effective remedies* above.

the arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.[256]

177. The UN Human Rights Council has called upon states to ensure adequate training, inter alia, of law enforcement officials, including in international human rights law.[257] According to the UN Basic Principles, in the training of law enforcement officials, special attention should be given to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, understanding crowd behaviour and methods of persuasion, negotiation and mediation, with a view to limiting the use of force and firearms.[258]

178. **Monitoring assemblies:** The UNGA and the Human Rights Council have recognized the important role of human rights defenders in the context of peaceful protests.[259] Human rights defenders can perform their role in a variety of ways, including as organizers of or participants in assemblies, but also as assembly monitors who observe and report on the conduct of assemblies and policing operations and their compliance with international human rights standards. The monitoring of assemblies by human rights defenders can help to assess the conduct of assemblies and policing operations. It can also contribute to an informed public debate about measures that may be needed to address shortcomings concerning the legal framework on assemblies, training needs of law enforcement officers or whether additional resources or equipment for the policing of assemblies are required.[260]

179. As the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has pointed out, the right to peaceful assembly not only covers the right to hold or participate in an assembly, but also protects the rights of those monitoring peaceful assemblies.[261] He has, therefore, called on states to ensure the protection of those monitoring and reporting on violations and abuses in the context of peaceful assemblies.[262] The Special Representative of the Secretary-General on the situation of human rights defenders has also called on states to allow human rights defenders to operate freely in the context of assemblies in order to enable them to perform their monitoring role.[263]

180. Participating States should actively support and facilitate the initiatives of human rights defenders to independently monitor and report on assemblies. Authorities are recommended to consult with assembly monitors both prior to the assembly – for

256 UN Basic Principles, principle 7.

257 A/HRC/RES/19/35, para. 7.

258 UN *Basic Principles,* principle 20.

259 See A/HRC/RES/226, para. 6; A/RES/68/181, para. 8; A/RES/66/164, para. 6.

260 See OSCE/ODIHR-Venice Commission Guidelines, para. 5.9, and for further details pp. 94-110.

261 See A/HRC/20/27, Summary.

262 A/HRC/20/27, para. 94.

263 See the report of the Special Representative of the Secretary-General on the situation of human rights defenders, UN Doc. A/62/225, 13 August 2007, para. 101(f)(i).

example, to prepare for policing operations and carry out risk assessments – as well as after the assembly has finished in order to tackle possible shortcomings that have been identified and to ensure that any misconduct by public officials during the assembly is appropriately addressed. Furthermore, the authorities are encouraged to work together with human rights defenders who carry out independent assembly monitoring when training law enforcement and other relevant officials. They are also encouraged to facilitate the international monitoring of assemblies by organizations such as ODIHR.

181. To increase public accountability for both organizers of assemblies and law enforcement officials, participating States should ensure that the media have full access to assemblies in order to facilitate independent coverage.[264] As the OSCE Representative on Freedom of the Media has pointed out, "uninhibited reporting on demonstrations is as much a part of the right to free assembly as the demonstrations are themselves the exercise of the right to free speech".[265]

F. Freedom of association and the right to form, join and participate effectively in NGOs

182. According to Article 20 of the UDHR, "everyone has the right to freedom of peaceful assembly and association" and "no one may be compelled to belong to an association". Article 22(1) of the ICCPR stipulates that "everyone shall have the right to freedom of association with others, including the rights to form and join trade unions for the protection of his interests". Article 11(1) of the ECHR contains a similar provision, according to which "everyone has the right to freedom of peaceful assembly and to freedom of association, including the right to form and to join trade unions for the protection of his interests". Article 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) also guarantees the right of all individuals to form trade unions and join the trade union of their choice, in order promote and protect their economic and social interests. According to Article 16 of the ACHR, everyone has the right to associate freely "for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes." Article 7 of the FCNM provides for the right of individuals belonging to a national minority to freedom of association. Article 17(2) of the FCNM further stipulates that the parties to the treaty undertake "not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organizations, both at the national and international levels." Article 5 of the UN Declaration on Human Rights Defenders reaffirms that, for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups.

264 *Ibid*. para. 101(f)(ii).

265 OSCE Representative on Freedom of the Media, Special Report, "Handling of the media during political demonstrations, Observations and Recommendations", 21 June 2007, <http://www.osce.org/fom/25744>. For more details on the role of media in connection with monitoring assemblies see also OSCE/ODIHR-Venice Commission Guidelines, pages 97-100.

183. No restrictions shall be placed on the exercise of the right to freedom of association other than those that are prescribed by law, serve a legitimate aim and are necessary in a democratic society. As stipulated in international law, only the following constitute permissible grounds for limitations of the right to freedom of association: national security interests; the protection of public safety, public health or morals; the prevention of disorder or crime; and the protection of the rights and freedoms of others. Any limitations on the exercise of this fundamental right must strictly comply with international norms and standards and must be in line with the principles of non-discrimination and proportionality. Furthermore, the Special Rapporteur on the rights to freedom of assembly and of association has recommended that states provide a detailed and timely written explanation for the imposition of any restriction, and that they ensure the possibility to challenge it before a competent and independent court.[266]

184. Article 22 of the ICCPR and Article 11 of the ECHR expressly state that these articles shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of the right to freedom of association. While certain restrictions on members of the armed forces, the police or the administration of the state may be justified where the exercise of this right would conflict with their public duties and/or jeopardize their political neutrality, any such restrictions must also be in line with the principles of legality, necessity and proportionality. This is to safeguard their right to associate freely with others, including for the purpose of defending human rights. As such, human rights defenders who are members of the armed forces, police or the state administration also have the right to organize themselves in associations to collectively pursue, promote and defend their common interests. Where these rights are subject to limitations, the reasons for such limitations should be regularly reviewed, as recommended by the Council of Europe Committee of Ministers, with a view to lifting the restrictions if there is no longer a valid justification for them.[267]

185. OSCE participating States have reaffirmed that the "right of association will be guaranteed" and have committed to "ensure that individuals are permitted to exercise the right to association, including the right to form, join and participate effectively in non-governmental organizations which seek the promotion and protection of human rights and fundamental freedoms, including trade unions and human rights monitoring groups".[268] They recognize as NGOs "those which declare themselves as such"[269] and consider them "an integral component of a strong civil society [...having pledged...] to enhance the ability of NGOs to make

266 A/HRC/23/39, 24 April 2013, para. 81.

267 Recommendation CM/Rec(2010)4 of the Committee of Ministers of the Council of Europe and explanatory memorandum on human rights of members of the armed forces, 24 February 2010, paras. 53-57, <http://www.coe.int/t/dghl/standardsetting/hrpolicy/publications/cmrec_2010_4en.pdf>. See also PACE Recommendation 1572 (2002) on the right to association for members of the professional staff of the armed forces, 3 September 2002, <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta02/erec1572.htm>.

268 Copenhagen 1990, paras. 9.3 and 10.3.

269 Moscow 1991, para. 43.

their full contribution to the further development of civil society and respect for human rights and fundamental freedoms".[270]

186. Freedom of association is a fundamental right that is "an essential prerequisite for other fundamental freedoms" and is "closely intertwined with freedom of expression, and assembly, as well as with other human rights [...]".[271] Freedom of association is integral to the defence of human rights. This is underscored by the UN Declaration on Human Rights Defenders, which provides for the right of human rights defenders to engage in activities individually or in association with others in its various provisions (Articles 5-9, 11-13 and 17).

187. Despite these and other guarantees, in many participating States, human rights defenders continue to face legal and administrative impediments to the full realization of their right to form, join and participate effectively in NGOs or other associations. National laws regulating the formation, functioning and funding of associations are often unclear or overly restrictive and therefore incompatible with international standards. The UN Special Rapporteur on the situation of human rights defenders noted in her 2012 report "that recent legislative developments in various countries are further restricting the right to associate freely".[272] Such laws are often adopted without consultations with civil society, while legislative reviews conducted by international experts on the compatibility of such laws with human rights standards, as well as their subsequent recommendations to states, are often left unimplemented.

188. It has been reported that in several participating States, cumbersome administrative hurdles further prevent human rights defenders from effectively exercising the right to freedom of association. In a number of participating States, associations are not considered legal if they are not registered. At the same time, onerous and lengthy bureaucratic procedures, which are also often applied in an arbitrary manner, significantly complicate the registration process. Often such bureaucratic registration hurdles are coupled with excessive reporting and other requirements for NGOs once they are registered and arbitrary checks, including financial and tax inspections. Such procedures and practices often aim at or result in state interferences in the internal set up of NGOs, their activities and independent decision-making. They seek to undermine the legitimate work of NGOs and put pressure on human rights defenders.

270 Istanbul 1999, "Charter for European Security: III. Our Common Response", para. 27.

271 Venice Commission, "Opinion on the compatibility with human rights standards of the legislation on non-governmental organizations of the Republic of Azerbaijan", CDL-AD (2011)035, para. 45; and Venice Commission and ODIHR, "Joint Interim Opinion on the Draft Law amending the Law on Non-Commercial Organisations and other Legislative Acts of the Kyrgyz Republic", CDL-AD(2013)030, para. 14.

272 A/67/292, 10 August 2012, para. 40.

Laws, administrative procedures and requirements governing the operation of NGOs

189. Participating States should provide for an enabling legal framework to ensure that human rights defenders can freely exercise their right to freedom of association, including the right to form, join and participate effectively in NGOs that seek to promote and protect human rights and fundamental freedoms. Such laws must be clear, precise and in strict compliance with international human rights standards. The UN Human Rights Council has underscored that consistency of national legislation with the UN Charter and international human rights law is of utmost importance. It has urged states "to create and maintain, in law and practice, a safe and enabling environment in which civil society can operate free from hindrance and insecurity".[273]

190. Participating States should ensure that the right to associate freely is guaranteed without discrimination. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has called upon states to ensure that the right to freedom of association is "enjoyed by everyone, any registered or unregistered entities, including women, those victims of discrimination because of their sexual orientation and gender identity, youth, persons belonging to minorities, indigenous peoples, non-nationals, including stateless persons, refugees or migrants, and members of religious groups, as well as activists advocating economic, social, and cultural rights".[274]

191. As the UN Special Rapporteur on the situation of human rights defenders has observed, laws that impose "far-reaching restrictions on the ability of organizations to carry out their activities without interference" or undermine "the independent functioning of a healthy civil society" should be amended or repealed.[275] Any relevant legislative initiatives to that end should be subject to open and transparent consultation with civil society. Consultations should commence at the earliest stage possible – preferably prior to the initial drafting – and should be open to NGOs without discrimination on account of their connection with particular groups or the nature of the rights defended.

192. To ensure the compatibility of domestic laws governing NGOs and other associations with human rights standards, participating States are encouraged to seek the expertise of international bodies that specialize on legislative review, such as OSCE/ODIHR and the Council of Europe's Venice Commission. They are encouraged to consider the opinions and implement recommendations made by these and other human rights mechanisms, including the UN Special Rapporteur on the right to freedom of peaceful assembly and of association and the UN Special Rapporteur on the situation of human rights defenders.

273 A/HRC/RES/22/6, adopted on 21 March 2013, para. 2; and A/HRC/RES/24/21, adopted on 27 September 2013, para. 2.

274 A/68/299, 7 August 2013, para. 58 (b).

275 A/64/226, 4 August 2009, paras. 53 and 54.

193. Participating States should respect and fully protect the rights of all individuals to associate freely online.[276] As declared by the Council of Europe Committee of Ministers, the right to freedom of association, alongside freedom of expression and freedom of peaceful assembly, "is essential for people's participation in the public debate and their exercise of democratic citizenship, and it must be guaranteed […] (without any online/offline distinction)."[277] The laws regulating access to and use of information and communication technology, mediums through which freedom of association can be exercised, should also provide for the free exercise of the right to association. Any limitations imposed on the right to associate freely online must strictly comply with international human rights standards.

Concerning the registration of NGOs:

194. NGOs should be allowed to exist and carry out their activities without having to register.[278] In line with their OSCE commitments, participating States shall recognize as NGOs those associations which declare themselves as such, according to national procedures.[279] National procedures must also comply with international human rights standards and OSCE commitments.

195. In a number of participating States, however, NGOs are required to be formally registered by a state organ and to obtain authorization to carry out their activities. In addition, in some participating States, registration procedures are lengthy, expensive and applied in an arbitrary and discriminatory manner. The imposition of excessive documentation requirements and several layers of bureaucracy lead to delays in the registration process or even prevent associations from registering.[280]

196. The UN Special Rapporteur on the situation of human rights defenders has highlighted the criminalization of activities carried out by unregistered groups as one of the most disturbing trends.[281] In some participating States, engaging in human rights work in association with others without registration is regarded as a criminal or administrative offence. A number of human rights defenders have been imprisoned on these grounds or were forced to leave their countries and seek international protection. Laws, regulations and practices that directly or indirectly

276 A/HRC/RES/24/21, adopted on 27 September 2013, para. 1.

277 Council of Europe Committee of Ministers, "Declaration on the protection of freedom of expression and freedom of assembly and association with regard to privately operated Internet platforms and online service providers", 7 December 2011, <https://wcd.coe.int/ViewDoc.jsp?id=1883671>, para. 1.

278 See report of the UN Special Rapporteur on the situation of human rights defenders, UN Doc. A/59/401, 1 October 2004, para. 82 (a). See also report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/23/39, 24 April 2013, para. 82 (a).

279 Moscow 1991, para. 43.

280 A/64/226, 4 August 2009, paras. 70 and 71.

281 *Ibid*.

criminalize carrying out unregistered human rights work, and thus violate fundamental international human rights guarantees, should be promptly abolished.[282]

197. While registration should not be compulsory, NGOs and other associations have a right to register as legal entities, for example, in order to benefit from additional state support and subsidies that are only available to legal entities. It is up to the NGO or association in question to decide whether they wish to register in order to access such benefits. Where domestic laws provide for different forms of legal entities – such as non-profit organizations, foundations or others – the requirements for registering as a legal entity should provide for sufficient flexibility in choosing the most suitable legal form for the association, and should function so as to empower human rights defenders in carrying out their work in association with others rather than obstruct it.

198. The UNGA has called upon states "to ensure, where procedures governing registration of civil society organizations exist, that these are transparent, non-discriminatory, expeditious, inexpensive, allow for the possibility to appeal and avoid requiring re-registration [...]".[283]

199. The ECtHR has held that significant delays in state registration and repeated failures by the responsible authorities to issue a definitive decision on the registration of an association may amount to a de facto refusal of registration and to an impermissible interference with the exercise of the right to freedom of association.[284] Domestic law should afford sufficient protection against such delays. It should contain clear time-limits for the authorities to take a decision, and it should define with sufficient precision the consequences of a failure by the authorities to take action within the statutory time-limits (for example, an automatic registration in the event of a timely decision).[285]

200. The registration authority should not interfere with the independence and autonomy of associations in the course of the registration process. For example, it should not unduly interfere with the freedom of the founders or members to choose the

282 The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association reiterated in his 2012 report that "Individuals involved in unregistered associations should indeed be free to carry out any activities, including the right to hold and participate in peaceful assemblies, and should not be subject to criminal sanctions" (A/HRC/20/27, 21 May 2012, para. 56).

283 A/RES/66/164, 10 April 2012.

284 See the ECtHR judgement in the case of *Ramazanova and Others v. Azerbaijan,* Application no. 44363/02, 1 February 2007, paras. 56-68.

285 *Ibid*. paras. 66 and 67. Furthermore, the ECtHR emphasized that it is "the duty of the Contracting State to organise its domestic state-registration system and take necessary remedial measures so as to allow the relevant authorities to comply with the time-limits imposed by its own law and to avoid any unreasonable delays in this respect"; in other words, a lack of resources is no justification for not complying with time-limits prescribed in the law (para. 65).

name, symbols or logos of their organization or to define its objectives and activities.[286] In some participating States, authorities have reportedly censored NGO statutes by requiring the removal of unwanted words, symbols, activities or objectives related to certain human rights issues or minority groups, or have denied registration if a title or symbol of an organization contains a name of a minority group. According to the Special Rapporteur on the situation of human rights defenders, certain governments apply such measures in order to "filter those groups that are critical of government policies"[287] and significantly restrict their activities.

201. As set out in the FCNM, freedom of association and the right to participate in the activities of NGOs also apply to minority communities. Restrictions must not be imposed arbitrarily, but only insofar as they are permitted by international law. In its jurisprudence, the ECtHR has emphasized that freedom of association is particularly important for persons belonging to minorities, including national and ethnic minorities.[288] While recognizing that certain restrictions on the right to freedom of association may be permissible if these are prescribed by law and necessary in a democratic society in the interest of one of the grounds enumerated in the Convention, the ECtHR has held in its case law that a refusal to register an association solely to prevent the spread of the idea that there is an ethnic minority on the territory of a state whose rights are not fully respected is in violation of Article 11 of

286 In Communication No. 1478/2006, *Kungurov v. Uzbekistan,* of 17 March 2006, the UN Human Rights Committee considered the case concerning the refusal of the authorities to register the non-governmental organization "Democracy and Rights" for not conforming with two requirements of domestic law – namely, that the association concerned should not engage in human rights activity that any official body is engaged in and should be present in every region of Uzbekistan to be considered a "national" NGO as opposed to a local NGO. The Committee held that the State Party failed to advance any argument as to why it would be necessary in a democratic society to condition the registration of an association based on the scope of its human rights activities to undefined issues not covered by state organs or on the existence of regional branches of the association (para. 8.5).

287 A/64/226, 4 August 2009, para. 60.

288 See *Gorzelik and others v. Poland,* Application no. 44158/98, 17 February 2004, para. 93. The case related to the refusal of the authorities to grant registration to an association that characterized itself as an organization of the Silesian "national minority". While the Court found that the interference in that case could not be considered disproportionate given the special status and privileges the registration of the association as a legal entity would have created under electoral laws, it emphasized that forming an association in order to express and promote its identity may be instrumental in helping a minority to preserve and uphold its rights. In doing so, the Court recalled the Preamble of the Council of Europe Framework Convention for the Protection of National Minorities, which sets out that "a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity".

the ECHR.[289] The Court has also stressed that "inhabitants of a region in a country are entitled to form associations in order to promote the region's special characteristics. The fact that an association asserts a minority consciousness cannot in itself justify an interference with its rights under Article 11 of the Convention".[290] Furthermore, the Court has held in its case law that the ability to establish a legal entity in order to act collectively in a field of mutual interest was one of the most important aspects of freedom of association. As such, it may amount to a violation of the right to freedom of association if registration as a legal entity is denied on the grounds that the statutes of an association does not conform with domestic laws, without giving the founders of the association an opportunity to change the statutes in order to bring them into line with domestic legal requirements before the final decision on the association's registration is pronounced.[291]

202. Furthermore, laws and regulations that require an unreasonably high number of people for the formation of an NGO or that entail nationality-requirements concerning the founders, which may prevent persons belonging to minority groups

289 See the judgements in the cases of *Bekir-Ousta and Others v. Greece*, Application no. 35151/05, 11 October 2007, as well as *Emin and Others v. Greece*, Application no. 34144/05, and *Tourkiki Enosi Xanthis* and *Others v. Greece*, Application no. 26698/05, both adopted on 27 March 2008. The cases related to the refusal of the registration, and in one case a court-ordered dissolution, of associations of the Muslim minority in the Greek region of Western Thrace on the grounds that the authorities considered the names of the organizations to mislead the public regarding the origin and objectives of the organizations – in terms of whether the associations represented a religious minority or an ethnic one – since by virtue of the Treaty of Lausanne of 1923, only a Muslim but not a Turkish minority in Western Thrace had been recognized. The Court held that the spreading of the idea that there was an ethnic minority could not be said to constitute a threat to democracy, especially considering that there was no information suggesting that the members of the associations advocated the use of violence or antidemocratic or anti-constitutional methods. The Court emphasized that freedom of association involved the right of everyone to express, in a lawful context, their beliefs about their ethnic identity; see *Tourkiki Enosi Xanthis and Others v. Greece,* para. 56.

290 See *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria,* Applications nos. 29221/95 and 29225/95, 2 October 2001, para. 89. See also *Sidiropoulos and Others v. Greece*, Application no. 26695/95, 10 July 1998, para. 44. In the case of *Stankov and the United Macedonian Organisation Ilinden*, the Court considered, *inter alia,* whether the voicing of separatist ideas and statements at public meetings to commemorate historic events (the applicant association had previously been refused registration because it was considered anti-constitutional) would justify a refusal by the authorities to allow such events to be organized (for content-based and other restrictions on assemblies see also the section on Freedom of peaceful assembly above). The Court held in the case that "the fact that a group of persons calls for autonomy or even requests secession of part of the country's territory – thus demanding fundamental constitutional and territorial changes – cannot automatically justify a prohibition of its assemblies. Demanding territorial changes in speeches and demonstrations does not automatically amount to a threat to the country's territorial integrity and national security. [...] In a democratic society based on the rule of law, political ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means" (para. 97).

291 See the judgement in the case of *Özbek and Others v. Turkey,* Application no. 35570/02, 6 October 2009.

from taking part in the formation of an association, should be abolished.[292] Such requirements may inhibit the establishment of NGOs and prevent human rights defenders from collectively pursuing shared goals as a legal entity.

203. To avoid undue interferences by state authorities and unduly long registration procedures that may obstruct human rights defenders from carrying out their activities in association with others pending the completion of the registration process, the UN Special Rapporteur on the rights to freedom of assembly and of association has recommended states to put in place a notification procedure, rather than operating an authorization system whereby human rights NGOs have to seek the approval by a registering authority in order to obtain legal personality. Under such a notification system the organization should automatically be afforded legal personality once it submits a notification about its formation to the competent authority.[293]

204. Any refusal by the registration body to grant legal personality must be reasoned and strictly in line with international human rights standards, and must be subject to prompt review by a competent, independent and impartial court. Similarly, there must be effective legal remedies to challenge any other administrative decisions or proceedings of the registration or supervisory bodies. In addition, the formation of branches of associations or networks of associations, including those that operate at the international level, as well as domestic chapters of international NGOs, should be subject to the same notification procedure.[294] Furthermore, as the Special Rapporteur on the situation of human rights defenders has emphasized, registered NGOs should not be required to re-register, but should be considered as continuing to operate legally and provided with accelerated procedures to update their registration in the event of the adoption of a new law.[295]

Concerning the functioning of NGOs:

205. Once an NGO has been established, participating States have a duty not to interfere with their activities and internal decision-making processes, regardless of whether or not the NGO is registered. However, as observed by the UN Special Rapporteur on the situation of human rights defenders, developments in recent legislation show that many NGO laws grant state authorities extensive powers to

292 As recommended by the Council of Europe Committee of Ministers concerning the legal status of non-governmental organizations in Europe, "two or more persons should be able to establish a membership-based NGO but a higher number can be required where legal personality is to be acquired, so long as this number is not set at a level that discourages establishment", CM/REC(2007)14, 10 October 2007, para. 17. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association considers it best practice for legislation to require no more than two persons to establish an association. While he notes that a higher number may be required to establish a union or a political party, this number should not be set at a level that would discourage people from engaging in associations. See Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/20/27, 21 May 2012, para. 54.

293 A/HRC/20/27, 21 May 2012, para. 58.

294 *Ibid*. para. 59.

295 A/59/401, para. 82(i).

interfere with and supervise NGO activities.[296] Anti-terrorism and anti-extremism laws are also being used increasingly by certain states in order to restrict and control the activities of civil society.

206. In some participating States, such interference and supervision include excessive reporting requirements, various checks and inspections of NGO documentation and premises, which often take place in an arbitrary manner and without prior notification, and the imposition of restrictions on certain human rights activities. In some participating States, authorities do not allow awareness-raising campaigns or other types of projects touching on certain human rights issues on the grounds that they compromise public safety, health or morals. Limitations on human rights activities are sometimes also justified by declaring that the human rights issues in question are not problematic and therefore do not need to be raised or addressed. Some participating States also deny the existence of certain minority groups, and ban NGO activities related to the protection and promotion of the rights of persons belonging to these groups.

207. In order to increase their control and supervision of the functioning of NGOs, authorities in some participating States collect information on staff or members of NGOs, as well as on beneficiaries of projects or participants in trainings, workshops and other events organized by NGOs. There are also reported instances of state authorities putting pressure on property owners to prevent them from renting indoor and outdoor spaces and facilities to NGOs.

208. The UN Special Rapporteur on the situation of human rights defenders has stated that such provisions and practices amount to serious infringements of the right to associate freely.[297] NGOs and other associations "should be free to determine their statutes, structure and activities and to make decisions without State interference".[298] Participating States should respect the right of NGOs to formulate their programmes and activities and manage their resources – including funding – independently and without interference from the authorities.[299] It is not up to the authorities to decide on what human rights issues or with what social groups NGOs can or cannot work. The Council of Europe's Recommendation on the legal status of NGOs in Europe stresses that "NGOs should be free to undertake research, education and advocacy on issues of public debate, regardless of whether the position taken is in accord with government policy or requires a change in the law".[300] NGOs should not be subject to direction by public authorities; a system of prior

296 A/67/292, 10 August 2012, para. 46.

297 *Ibid*.

298 A/HRC/20/27, para. 97.

299 As regards trade unions, for example, the International Labour Organization (ILO) Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organise stipulates that "[w]orkers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes" (Article 3(1)).

300 CM/REC(2007) 14, para. 12.

authorization of some or all of the activities of an association is therefore incompatible with the freedom of association.[301] Accordingly, participating States should promptly eliminate any such systems.

209. States should ensure that reporting requirements placed on NGOs and other associations are reasonable and do not inhibit their functional autonomy.[302] Similarly, laws and regulations concerning audits and inspections of NGO offices and their financial records should be clear, fair and transparent, and should provide for sufficient safeguards against abuse. Ample notice should be given prior to an inspection to give the NGO adequate time to prepare. Appropriate notice should also be given if an NGO fails to comply with reasonable reporting requirements or other regulations so as to give the organization an opportunity to supply additional documentation or make corrections.[303] Any sanctions – such as fines and the withdrawal of state subsidies or other privileges – imposed in case of persisting violations of reasonable requirements and regulations must be proportionate, and preference should always be given to the least intrusive means of achieving the envisioned objective.[304] In order to provide safeguards against abuse, there must under all circumstances be fully effective remedies to appeal any such sanctions. While laws and regulations may require that individual members of an NGO or other association that does not have legal personality bear liability, such provisions must not be abused as a means of exerting pressure on individual human rights defenders for their legitimate work. Participating States should also eliminate practices of harassment and intimidation of project beneficiaries and private contractors who provide services to NGOs.

301 See CDL(2013)017, "Some preliminary reflections on standards and legislation relating to freedom of association and non-governmental organisations (NGOs)", 28 March 2013, paras. 19-21.

302 A/HRC/RES/22/6, 12 April 2013.

303 See UN Special Rapporteur on the situation of human rights defenders, "Commentary to the Declaration of Human Rights Defenders", p. 46, para. xiii, which also points out that states should not criminalize non-compliance with laws governing civil society organizations.

304 In its views on the case of *Belyatsky v. Belarus* (Communication 1296/2004, 24 July 2007, UN Doc. CCPR/C/90/D/1296/2004), which concerned the dissolution of the human rights organization "Viasna", the UN Human Rights Committee emphasized: "[t]he mere existence of reasonable and objective justifications for limiting the right to freedom of association is not sufficient. The State party must further demonstrate that the prohibition of an association is necessary to avert a real and not only hypothetical danger to national security or democratic order, and that less intrusive measures would be insufficient to achieve the same purpose" (para. 7.3). See also the case of *Korneenko et al. v. Belarus* (Communication 1274/2004, 31 October 2006, UN Doc. CCPR/C/88/D/1274/2004), which concerned the dissolution of another human rights association by a Court order based on two perceived violations, namely: "(1) improper use of equipment, received through foreign grants, for the production of propaganda materials and the conduct of propaganda activities; and (2) deficiencies in the association's documentation". The Committee held that the dissolution violated the requirements of Article 22(2) of the ICCPR, noting among other things that even if the documentation did not fully comply with the requirements of domestic law, the reaction of the state party's authorities in dissolving the association was disproportionate (para. 7.6.). The Venice Commission of the Council of Europe also recalled "that the dissolution of an NGO is an extreme measure, which needs to be based on a well-founded rationale and it is well established under the international case-law that it can only be resorted to in exceptional situations." See "Opinion on the compatibility with universal human rights standards of article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus", CDL-AD(2011)036, para. 107.

Access to funding and resources

210. The ability to seek, secure and use financial resources from domestic, foreign and international sources is an essential element of the right to freedom of association.[305] The UN Declaration on Human Rights Defenders provides that "everyone has the right, individually and in association with others, to solicit, receive, and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means [...]".[306] The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that states have the obligation to facilitate, not restrict, the access of associations, both registered and unregistered, to funding, including from foreign sources.[307]

211. In a number of participating States, access of NGOs to funding, especially from abroad, is seriously curtailed. Laws or other normative decrees and regulations in some participating States interfere with the freedom of NGOs to seek and receive foreign funding, for example, by compelling them to seek state authorization to carry out fundraising activities, imposing special requirements for the registration of raised funds and subjecting the organization to onerous financial reporting requirements. In addition, government authorities sometimes interfere directly in fundraising activities by controlling the distribution or reallocating grants from external donors to certain NGOs or projects.

212. Participating States should abolish all undue restrictions on foreign sources of funding imposed under the pretext of combating "foreign interference" and defending "national interests", and should respect the right of NGOs to promote and protect all human rights. They should ensure access to funding for NGOs – including from abroad – without the requirement to obtain prior governmental authorization and under equitable conditions. Any requirements must conform with "those ordinarily laid down for any other activity unrelated to human rights within the country to ensure transparency and accountability"[308] and must be "in compliance with generally applicable foreign exchange and customs laws".[309] Furthermore "no laws should criminalize or delegitimize activities in defense of human rights on account of origin of funding thereto".[310]

213. Prevention of money laundering or terrorist financing should not be used as a justification or pretext for restricting NGO access to funding. While the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association noted in this context that states have an interest in protecting "national security or public safety", which are legitimate grounds for restricting freedom of association, he

305 A/HRC/23/39, 24 April 2013.

306 Article 13.

307 A/HRC/23/39, 24 April 2013, paras. 17-18, 79 and 82.

308 A/HRC/RES/22/6, 12 April 2013, para. 9(b).

309 A/64/226, 4 August 2009, para. 123.

310 A/HRC/RES/22/6, 12 April 2013, para. 9(b).

underscored that there is also a need for states to comply with international human rights law while countering terrorism. To be in conformity with international standards, any limitations to the right to freedom of association, including with respect to funding, must not only pursue a legitimate aim but also be necessary and proportionate to that aim. As the Special Rapporteur pointed out, it is a violation of international law to use counter-terrorism or "anti-extremism" measures as a pretext to constrain dissenting views or independent civil society.[311]

214. In some participating States, NGOs that receive foreign funding are labelled as "foreign agents" or otherwise subjected to negative portrayals of their work and overall role in society. Regulatory measures "which compel recipients of foreign funding to adopt negative labels constitute undue impediments to the right to seek, receive and use funding".[312] Such labelling may create an atmosphere of mistrust, fear and hostility towards the affected individuals and organizations and lead to their extensive stigmatization. This hinders the efficiency of independent human rights work and may threaten the dignity, integrity and security of human rights defenders. Such laws and practices "undoubtedly represent an interference with the exercise of the right to freedom of association and of freedom of expression without discrimination"[313] and should be promptly amended or repealed. In some participating States, the non-compliance with such regulations may lead to heavy fines or even criminal charges against human rights defenders and result in their imprisonment.

215. Participating States should facilitate the access of NGOs and other associations to both domestic and foreign funding and other resources by assisting them and supporting their efforts to seek and obtain funds for independent human rights work. Participating States should refrain from imposing restrictions that directly or indirectly discriminate against certain groups of human rights defenders, and should ensure equal and non-discriminatory access to public funding. Necessary measures should be taken to make the relevant procedures transparent and fair and to circulate calls for applications as widely as possible, without excluding particular NGOs owing to the particular human rights issues on which they work. Government funding or other means of support shall not be used as a tool to put pressure on NGOs to influence their activities or internal decision-making processes.

311 A/HRC/23/39, 24 April 2013, paras. 22 and 23.

312 A/HRC/23/39, 24 April 2013, para. 82(d).

313 Venice Commission and OSCE/ODIHR, "Joint Interim Opinion on the Draft Law amending the Law on Non-Commercial Organisations and other Legislative Acts of the Kyrgyz Republic", CDL-AD(2013)030, 11-12 October 2013.

G. The right to participate in public affairs

216. As pointed out by the UN Human Rights Committee, the right to participate in the government and in the conduct of public affairs as set out in Article 25 of the ICCPR does not only include the right to vote and be elected, but also the right to take part in the conduct of public affairs by exerting influence through engaging in public debate and dialogue with freely chosen representatives.[314] The right to take part in the conduct of public affairs is also enshrined in Article 23 of the ACHR, while Article 15 of the FCNM stipulates that the parties to the treaty "shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them."

217. The UN Declaration on Human Rights Defenders acknowledges the valuable work of individuals and associations in contributing to the effective elimination of human rights violations, and states that everyone has the right, individually or in association with others, to disseminate information and knowledge on all human rights issues, to hold and form opinions on the observance, both in law and practice, of human rights and fundamental freedoms and to draw public attention to those matters (Article 6). It further declares that everyone has the right to develop, discuss and advocate new human rights ideas and principles (Article 7) and to have effective access, on a non-discriminatory basis, to participating in the government of his or her country and in the conduct of public affairs (Article 8).

218. Such public engagement of individuals and associations, including NGOs, is "of paramount importance and represents a crucial element of a healthy civil society."[315] Reaffirming the vital role that NGOs, groups and individuals play in promoting democracy, human rights and the rule of law as set out in a number of OSCE commitments,[316] OSCE participating States have committed to the aim of "strengthening modalities for contact and exchanges of views between NGOs and relevant national authorities and governmental institutions".[317]

219. Nevertheless, in many participating States, human rights defenders continue to face impediments to the full realization of their right to participate in the conduct of public affairs. In practice, the contributions made by human rights defenders and NGOs towards strengthening development and democratic processes are often neglected or underestimated. Furthermore, some participating States impose

314 UN Human Rights Committee General Comment 25, UN Doc. CCPR/C/21/Rev.1/ Add.7, 12 July 1996, para. 8.

315 Venice Commission and OSCE/ODIHR "Joint Interim Opinion on the Draft Law amending the Law on Non-Commercial Organisations and other Legislative Acts of the Kyrgyz Republic", CDL-AD(2013)030, 11-12 October 2013, para. 15.

316 See, for example, Paris 1990, "A New Era of Democracy, Peace and Unity"; the Helsinki Document, *The Challenges of Change, Summit of Heads of State or Government* (Helsinki 1992), "Decisions: IV. Relations with International Organizations, Relations with Non-Participating States, Role of Non-Governmental Organizations (NGOs)", para. 1; Istanbul 1999, "Charter for European Security: III. Our Common Response", para. 27.

317 Moscow 1991, para. (43.1).

restrictive laws and practices that considerably limit or ban the legitimate activities of human rights defenders. Surveys, reports and other studies produced by human rights defenders and their NGOs are often portrayed as having a "political agenda" or as being biased or irrelevant. Other essential elements of human rights work, such as public outreach, awareness-raising and advocacy, are also constrained in several participating States as a result of unreasonable limitations, for example, concerning the thematic or geographical scope of NGO work. In some participating States, NGOs are, for example, reportedly only authorized to carry out their activities in the administrative district where the official registration was acquired. Such regulations restrict the access of these NGOs to vulnerable minority groups or rural and remote areas to carry out human rights work, as well as their participation in public affairs accordingly. Participating States should abolish any regulations and practices that impede the active, free and meaningful participation of human rights defenders and NGOs in public affairs.

220. In a number of participating States human rights defenders and NGOs are not – or not meaningfully – consulted on important social issues or legislative initiatives, including those that govern the operation of NGOs and thus directly affect their ability to pursue their legitimate work and objectives. If such consultations take place, they are often organized on an ad-hoc basis, without ensuring equal and non-discriminatory participation and without providing adequate time for human rights defenders and NGOs to assess the implications of legislative initiatives and provide input. The Council of Europe Committee of Ministers has stressed that governments at all levels "should ensure the effective participation of NGOs without discrimination in dialogue and consultation on public policy objectives and decisions" and should consult NGOs during the drafting of legislation which affects their status, financing or spheres of operation.[318] Such consultation can contribute to ensuring the compliance of legislation that is being developed or reviewed with international human rights standards. It is in the common interest of NGOs and public authorities, as well as society as a whole, to have available such mechanisms so that relevant expertise and competent input is fully exploited.[319]

221. Effective participation goes beyond merely formal consultations. To guarantee effective participation, consultation mechanisms must allow for input at an early stage and throughout the process; they must also be open to alternative views on the subject in question and to having these views ultimately shape its outcome. As regards the interaction between civil society actors, in particular human rights defenders and the UN, the UN Human Rights Council has reaffirmed the necessity for inclusive and open dialogues and underlined that participation by civil society should be facilitated in a transparent, impartial and non-discriminatory manner.[320]

318 CM/REC(2007)14, paras. 76 and 77.

319 "Explanatory Memorandum to Recommendation CM/Rec (2007) 14 of the Committee of Ministers to member states on the Legal Status of Non-Governmental Organizations in Europe", the Council of Europe Committee of Ministers, para. 135.

320 A/HRC/RES/22/6, 12 April 2013, paras. 15 and 17.

The same applies in OSCE participating States. Human rights defenders and their organizations should be able to access and effectively use participation and consultation mechanisms irrespective of the nature of the rights they defend, their affiliation with a particular social group or whether they take critical positions towards state policies or actions.

222. While ensuring that the participation and consultation process is open to all interested parties, participating States should proactively reach out, in particular, to seek the participation of human rights defenders with specific expertise on the subject matter and of individuals and groups that are representative of those that will be affected by the policy, legislative or other measures under consideration.[321] They should take practical steps to ensure the openness of participation and consultation mechanisms for those with special needs, for example, human rights defenders with disabilities.[322] Furthermore, in collaboration with NGOs, human rights defenders and independent NHRIs operating in accordance with the Paris Principles, participating States should take measures to strengthen the capacity of traditionally marginalized or excluded groups and human rights defenders advocating for their rights, so that they may actively and meaningfully participate in the conduct of public affairs.[323]

321 For related recommendations see, for example, the UN Committee on the Rights of the Child (CRC): "[t]he Committee recommends that the State party encourage the active and systematic involvement of civil society, including NGOs and associations of children, in the promotion and implementation of children's rights, including, their participation in the planning stage of policies and co-operation projects, as well as in the follow-up to the concluding observations of the Committee and the preparation of the next periodic report." See the UN Committee on the Rights of the Child, "Concluding Observations: Netherlands", UN Doc. CRC/C/NLD/CO/3, 27 March 2009, para. 25. For similar recommendations, see also "Concluding Observations: Serbia", UN Doc. CRC/C/SRB/CO/1, 22 June 2010, para. 24. See also, for example, the UN Committee on the Elimination of Racial Discrimination (CERD), "[t]he Committee recommends that the State party continue consulting and expanding its dialogue with civil society organizations working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report." See the UN Committee on the Elimination of Racial Discrimination, "Concluding Observations: Canada", UN Doc. CERD/C/CAN/CO/19-20, 4 April 2012, para. 26.

322 Article 29 of the Convention on the Rights of Persons with Disabilities requires States Parties to the treaty to "[p]romote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including: (i) Participation in non-governmental organizations and associations concerned with the public and political life of the country (...); (ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels." Implementation of this provision also requires practical steps to ensure the accessibility of participation and consultation mechanisms in accordance with Article 9 of the Convention, including, for example, the physical accessibility of meetings and accessibility of consultation documents, among others. Article 9 of the Convention stipulates: "[t]o enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas."

323 See the recommendation to states of the Special Rapporteur on the situation of human rights defenders in her report on the relationship between large-scale development projects and the activities of human rights defenders, UN Doc. a/68/262, para. 81(g). In her report, the Special Rapporteur also called on private companies to: "[f]ully involve stakeholders, especially affected communities and those defending their rights, in all stages of large-scale developments projects, and engage with such stakeholders in good faith and in a meaningful way, not just as a formality". See *ibid*. para. 83(c).

223. Participating States should encourage and proactively facilitate the equal and meaningful participation of human rights defenders and NGOs, including those working at the grass-roots levels, by ensuring access to relevant information, supporting the conduct of independent studies and surveys, welcoming public policy debates and human rights-monitoring activities, including the observation of trials and other proceedings. As part of their participation in actions aimed at strengthening the rule of law, including through established mechanisms for consultation and dialogue in the development and review of laws and legislative amendments, human rights defenders should also be allowed unhindered access to courts so that they may monitor the functioning of the justice system. Furthermore, human rights defenders should be allowed to carry out monitoring activities in detention facilities and in other public institutions, and should be appropriately involved in the establishment and operation of independent oversight bodies.[324] Participating States are also encouraged to seek the assistance of human rights defenders, their groups and organizations, in building the capacity of relevant state institutions, training public officials on human rights and sensitizing them to the legitimacy and importance of the work of human rights defenders (see also the section on Framework for implementation below).

H. Freedom of movement and human rights work within and across borders

224. Article 12 of the ICCPR and Protocol 4 to the ECHR guarantee the right of individuals to leave any country, including their own, as well as the right to return to or enter their country. Furthermore, Article 13 of the UDHR affords everybody the right to freedom of movement and residence within the borders of each state, while Article 12 of the ICCPR and Protocol 4 to the ECHR apply these rights to

324 In its Concluding Observations on Bulgaria, for example, the UN Committee against Torture (CAT) expressed concern that "independent monitoring by civil society organizations is not allowed in all cases of detention and that non-governmental organizations such as the Bulgarian Helsinki Committee require a prosecutor's permission for access to pre-trial detainees" and recommended the state party to "ensure independent, effective and regular monitoring of all places of detention by independent non-governmental bodies." See "Concluding Observations of the Committee against Torture: Bulgaria", CAT/C/BGR/CO/4-5, 14 December 2011, para. 11. Concerning the establishment of the national preventive mechanism (NPM) for the monitoring of places of detention under the Optional Protocol to the Convention against Torture (OPCAT), the Guidelines of the Sub-Committee on the Prevention of Torture state that the identification or creation of the NPM should be "an open, transparent and inclusive process which involves a wide range of stakeholders, including civil society", and that this should also apply to the process for the selection and appointment of members of the NPM. See Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, "Guidelines on national preventive mechanisms", CAT/OP/12/5, 9 December 2010. The Working Group on Arbitrary Detention, for example, recommended the Government of Georgia to "[e]nsure systematic civil society participation in the monitoring and investigation of police stations and prison facilities; in this regard, it should ensure access to civil society organizations (other than those represented in the national preventive mechanism) to all premises and facilities where people are detained." See "Report of the Working Group on Arbitrary Detention, Addendum, Mission to Georgia", UN Doc. A/HRC/19/57/Add. 2, 27 January 2012, para. 98(c). CAT also recommended monitoring by NGOs to enhance oversight in the context of expulsion operations carried out by the police. See the UN Committee against Torture, "Concluding Observations: Belgium", UN Doc. CAT/C/BEL/CO/3, 3 January 2014, para. 20.

individuals lawfully residing in a state.[325] Article 22 of the ACHR contains similar provisions concerning freedom of movement and residence.

225. Article 12 (3) of the ICCPR, Article 2(3) of Protocol 4 to the ECHR and Article 22(3) provide for exceptional circumstances in which some of these rights may be restricted. Such circumstances are limited to the protection of national security and public safety, the maintenance of public order, the prevention of crime, the protection of public health or morals, or the protection of the rights and freedoms of others. Any limitation must strictly comply with the principles of legality, necessity and proportionality in accordance with international human rights standards. Furthermore, they must be compatible with other fundamental human rights norms, such as the prohibition of discrimination. Participating States should review their legislation and practices relating to freedom of movement to ensure that they are fully consistent with international human rights standards. They should ensure the meaningful, open and inclusive consultation and participation of civil society, including human rights defenders, in discussions about legislative initiatives to bring their laws in line with international standards.

226. Participating States have repeatedly reaffirmed the rights of everyone to freedom of movement and residence within the borders of each state, and to leave any country, including their own, and to return to their country. [326] Furthermore, they have undertaken a number of commitments in relation to the procedures for entry into their territories by citizens of other participating States. In particular, they have expressed the intention to "facilitate freer movement and contacts, individually and collectively, whether privately or officially, among persons, institutions and organizations of the participating States". More specifically, they have committed to gradually simplify and administer flexibly the procedures for exit and entry; to ease regulations concerning movement of citizens from other participating States in their territory; and to lower, where necessary, the fees for visas and official travel documents.[327] In addition, they have pledged to ensure that their policies concerning entry into their territories are fully consistent with the aims set out in the relevant provisions of the Final Act.[328] They have further stated that "[t]hey will give serious consideration to proposals for concluding agreements on the issuing of multiple-entry visas and the reciprocal easing of visa processing

325 In its General Comment No. 27 on Article 12 of the ICCPR, the UN Human Rights Committee specifies that "in principle, citizens of a State are always lawfully within the territory of that State" and "an alien who entered the State illegally, but whose status has been regularized, must be considered to be lawfully within the territory". See UN Human Rights Committee General Comment No. 27 on Freedom of movement (Article 12), 2 November 1999, para. 4. Also, the Committee has emphasized that "[t]he right to move freely relates to the whole territory of a State, including all parts of federal States" (para. 5).

326 See, for example, Vienna 1989, "Questions Relating to Security in Europe: Principles", para. 20.

327 See 1975 Helsinki Final Act section "1. Human Contacts" and, more specifically, sub-section "(d) Travel for Personal or Professional Reasons" therein.

328 Vienna 1989, "Co-operation in Humanitarian and Other Fields", para. 2.

formalities, and consider possibilities for the reciprocal abolition of entry visas on the basis of agreements between them."[329]

227. Participating States have underlined the importance of freer movement and contacts in the OSCE region for the protection and promotion of human rights and fundamental freedoms. In this context, they have committed themselves to allow members of human rights monitoring groups and NGOs seeking to defend human rights "to have unhindered access to and communication with similar bodies within and outside their countries and with international organizations".[330] In this vein, they have reaffirmed their pledge to simplify visa application procedures by ensuring that applications are processed as expeditiously as possible and by reducing fees charged in connection with visa applications to the lowest level possible.[331] Furthermore, they have committed to facilitating visits to their countries by NGOs from any of the participating States in order to observe human dimension conditions.[332]

228. Despite these and other commitments, human rights defenders in some participating States continue to face severe obstacles to their freedom of movement from and within their own countries and to other countries. This significantly limits and often prevents human rights defenders from carrying out their legitimate activities as it restricts, for example, their physical access to a particular geographical area, target group, an assembly or human rights conference or training event located within or outside their own country. As noted by the UN Special Rapporteur on the situation of human rights defenders, such travel restrictions are contrary to the spirit of the UN Declaration on Human Rights Defenders and the recognition that individuals, groups and associations have the right to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels.[333] In some participating States, human rights defenders report being subjected to harassment when they return to their own countries after attending human rights events abroad. Furthermore, the overly restrictive application of visa regulations by participating States and related bureaucratic procedures often impede the participation of human rights defenders in activities abroad, including in human rights monitoring or fact-finding missions, international consultations, networking and capacity-building events.

229. **Right to leave and return to one's country:** Participating States should ensure that human rights defenders fully enjoy the right to leave any country, including their own. Undue restrictions on the exercise of this right, such as unreasonable

329 *Ibid*. para. 22.

330 Copenhagen 1990, para. 10(4).

331 *Ibid*. paras. 19, 19(1) and 19(2).

332 Moscow 1991, para. 43.2.

333 The UN Special Rapporteur on the situation of human rights defenders, "Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society, to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms", July 2011, p. 53.

delays in the issuance of travel documents and travel bans that prevent human rights defenders from leaving the country solely for reasons related to their human rights work, should be promptly removed. The UN Human Rights Committee has also expressed its concern about the need for individuals to obtain an exit visa in order to be able to travel abroad, and has stated that such systems should be abolished.[334] Participating States have reaffirmed that they respect the right of everyone to leave any country, including their own, and to return to their country, in accordance with states' international obligations and CSCE commitments. As such, they have stated that "[r]estrictions on this right will have the character of very rare exceptions, will be considered necessary only if they respond to a specific public need, pursue a legitimate aim and are proportionate to that aim, and will not be abused or applied in an arbitrary manner".[335]

230. Where human rights defenders are denied the right to leave their country because their names appear on a list of individuals whose movement from the country has been prohibited, they should be notified of this status as soon as the respective decision has been made; they should also be informed of the substantive justification of such a decision and provided with the possibility to challenge the travel restriction before a competent, independent and impartial court. The names of human rights defenders should be promptly removed from the list if there is no lawful justification for their inclusion on the list. Procedures relating to the imposition of travel restrictions on human rights defenders should be transparent, lawful and accountable.

231. **Freedom of movement within the country:** In a number of participating States, human rights defenders also continue to face undue restrictions with regard to free movement across the territory of the state. They are barred from accessing certain parts of the country, autonomous regions or disputed territories, and therefore prevented from conducting monitoring and reporting or other activities to promote the observance of human rights in those areas. Furthermore, in some participating States, free movement is restricted in order to prevent human rights defenders from taking part in certain public events, including meetings, marches and demonstrations that convey messages that are critical of the authorities or in favour of

334 See UN Human Rights Committee, "Concluding Observations on Uzbekistan", UN Doc. CCPR/C/UZB/CO/3, 7 April 2010, para. 18, and "Concluding Observations on Kazakhstan", UN Doc. CCPR/C/KAZ/CO/1, 19 August 2011, para. 18.

335 Copenhagen 1990, para. 9.5.

equal rights for minority or marginalized groups.[336] OSCE participating States have committed to "remove all legal and other restrictions with respect to travel within their territories for their own nationals and foreigners, and with respect to residence for those entitled to permanent residence, except those restrictions which may be necessary and officially declared for military, safety, ecological or other legitimate government interests, in accordance with their national laws, consistent with CSCE commitments and international human rights obligations. The participating States undertake to keep such restrictions to a minimum".[337]

232. Preventing the access of human rights defenders to relevant sites – such as places where assemblies or protests are held or where people are deprived of their liberty – for the purpose of monitoring, reporting and other human rights activities, is not a legitimate justification for restrictions in the context of this commitment. In recognition of the importance of the work of human rights defenders in enhancing the implementation of human dimension commitments, participating States should proactively facilitate the free movement of human rights defenders across the territory of the state, including to remote regions, as required to effectively pursue their human rights activities. They should also actively facilitate access of human rights defenders to relevant sites to support human rights monitoring and reporting.[338]

233. **Entry regulations:** Travel by human rights defenders to other participating States to conduct human rights work, including advocacy, participation in meetings and assemblies, monitoring and reporting, should be facilitated and welcomed. The UN Human Rights Committee, for example, has noted in this regard that representatives of international organizations and NGOs, journalists and human rights defenders should be allowed to enter and carry out their work in another country

336 According to the European Court of Human Rights, exclusion of an individual from a particular public area, for example a city centre district, amounts to interference with the right to freedom of movement (see *Oliviera v. Netherlands*, Application no. 33129/96, 6 November 2002). Also, preventing someone from leaving their house and/or stopping them from leaving a particular area are also examples of interference with freedom of movement (see *Ivanov v. Ukraine*, Application no. 15007/02, 7 March 2007). In the case of *Shimovolos v. Russia* (Application no. 30194/09, 21 June 2011) the Court also found a violation of Article 5 (right to liberty and security) for an arrest of a human rights activist that, according to the authorities, was intended to prevent the applicant from committing "offences of an extremist nature". However, from the domestic judgements it had transpired that the police measures against the applicant were taken because his name was registered in a "Surveillance Database" (whenever a person mentioned in the database purchased a train or airplane ticket the Interior Department of Transport received an automatic notification). According to the police attendance reports, the applicant was checked and arrested on the basis of information that an opposition rally was planned in Samara and that the Interior Department considered it necessary to stop members of certain opposition organizations from taking part in that rally in order to prevent them from committing "unlawful and extremist acts". The Court also found a violation of the right to private life due to the applicant's inclusion in the database, which did not offer sufficient safeguards against abuse. See section on the *Right to private life* below.

337 Moscow 1991, para. 33.

338 This is consistent with the recommendations of international human rights bodies. The UN Committee against Torture in its Concluding Observations on Belarus, for example, urged the state party "to grant access to independent governmental and non-governmental organizations to all detention facilities in the country, including police lock-ups, pre-trial detention centres, security service premises, administrative detention areas, detention units of medical and psychiatric institutions and prisons", UN Doc. CAT/C/BLR/CO/4, 7 December 2011, para. 14. See also the section *Right to participate in the conduct of public affairs* above.

and guaranteed the right to freedom of expression in the conduct of their work.[339] Visa regimes and relevant procedures should not impose undue restrictions for such travel and should be simplified as much as possible. Participating States should generally recognize human rights monitoring, reporting and other human rights activities as legitimate purposes for visits, and should facilitate visas for such visits to the extent possible. Information regarding visa requirements for human rights defenders should be precise and clear, and should be made easily accessible. In addition, participating States should ensure that officials involved in decisions on visa applications are appropriately trained and sensitized to the specific challenges and needs of human rights defenders and the legitimacy and importance of their work, including across borders. Furthermore, participating States should process visa applications as expeditiously as possible, and observe the principles of proportionality and non-discrimination when deciding whether to issue visas.[340] The importance of these principles in dealing with visa applications is also reaffirmed, for example, in Article 39 of the Visa Code adopted by the European Parliament and the Council, which stipulates that "consular staff shall not discriminate against persons on grounds of sex, language, religion, political or other opinion, national or social origin, property, birth, age or other status" and "any measures shall be proportionate to the objectives pursued by such measures".[341]

234. In general, visa regulations are not sensitive to the specifics of the work of human rights defenders, which can be carried out individually or in association with others, and in registered or unregistered NGOs. As a result, human rights defenders working individually or in unregistered associations may be unable to obtain required documents regarding their official place of employment, the duration of their employment contract, their level of income and other related documentary evidence to prove their financial sustainability and attachment to their own country. Moreover, invitations issued by unregistered NGOs and human rights defenders working individually to human rights defenders from other participating States for the purpose of human rights work may not be considered by visa issuing authorities as official and valid. As such, participating States should also consider practical ways to ensure, to the extent possible, that human rights defenders' specific individual circumstances – such as, for example, past arbitrary convictions and charges and arrests resulting from human rights work – do not result in visa applications being denied or unduly delayed. Similarly, the relevant authorities should be sensitive to specific problems facing human rights defenders who have been granted refugee status or other forms of protection and who seek to travel from one participating State to another to attend human rights meetings or conferences,

339 UN Human Rights Committee, "Concluding Observations on Uzbekistan", UN Doc. CCPR/C/UZB/CO/3, 7 April 2010, para. 24.

340 As regards the principle of non-discrimination, Vienna 1989 (Co-operation in Humanitarian and Other Fields) stresses that participating States "will deal favourably with applications for travel abroad without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, age or other status" (para. 20).

341 Regulation (EC) No. 810/2009 of the European Parliament and of the Council establishing a Visa Code, 13 July 2009, Article 39.

for example, as well as the specific problems that stateless persons encounter in this regard.

235. In the case a visa application is refused, the applicant should be duly informed of the reasons for such a decision and of the available remedies to challenge it. Human rights defenders who are denied entry into a country because they have been included on a list prohibiting their entry to one or a group of participating States should also be entitled to know about and challenge these prohibitions. The procedures for such appeals should be established by the respective OSCE participating States.

236. **Human rights defenders at imminent risk:** Furthermore, participating States should assist human rights defenders who face serious risks to their lives and well-being to move temporarily to a safe environment if they are in need of temporary respite and protection. For example, they should consider issuing multiple entry visas for at-risk human rights defenders that provide them with the flexibility to quickly leave their country if they come under attack. They should also consider adopting and maintaining effective procedures to allow for the issuance of visas under expedite procedures (emergency visas) for that purpose if required (see the section on Framework for implementation for examples of good practices in this regard). Such measures would be in line with the commitment to "pay immediate attention to applications for travel of an urgent humanitarian nature and deal with them favourably".[342]

237. This commitment was reinforced when participating States reaffirmed that they would "ensure, in dealing with visa applications, that these are processed as expeditiously as possible in order, *inter alia,* to take due account of important family, personal or professional considerations, especially in cases of an urgent, humanitarian nature".[343] PACE has also emphasized the importance of this protection measure and called upon states to "establish humanitarian visa schemes or take any other appropriate measure for human rights defenders facing imminent danger or in need of respite as a consequence of persistent persecution in third countries, or at least facilitate the issue of emergency visas for them in such situations".[344] In this context, the protection needs of the immediate family members of human rights defenders should also be duly taken into account, reviewed favourably and processed as rapidly as possible.

238. Furthermore, in line with their international obligations, participating States should also grant human rights defenders longer-term international protection when they have to flee their country for fear of persecution on account of their human rights work. The non-refoulement obligations under international law must be fully observed under all circumstances. Human rights defenders faced with the

342 Vienna 1989, "Co-operation in Humanitarian and Other Fields", para. 12.

343 Copenhagen 1990, para. 10(4).

344 PACE Resolution 1660 (2009) on "the Situation of human rights defenders in Council of Europe member states", para. 12.2.

risk of being subjected to violations of their right to life, to be free from torture and other ill-treatment or other serious human rights violation in their country of origin or habitual residence must not be returned to those countries.

239. **Crossing borders:** When travelling to another participating State, human rights defenders should not be subjected to border checks that are disproportionate and that fail to respect their dignity. In some participating States, however, the use of practices intended to intimidate and harass at border crossings persist, with reports suggesting that human rights defenders are sometimes singled out. Such practices include disproportionate body searches, the requirement to remove clothing or excessive luggage searches. Reported instances of harassment of human rights defenders when crossing borders also include the confiscation, without explanation, of leaflets, brochures, publications and other hand-out materials that are needed to carry out human rights activities. Furthermore, when crossing borders, human rights defenders have also faced arbitrary confiscation of equipment, including IT equipment with private data. Such practices may amount to undue interference in the right to freedom of expression, the right to seek and impart information or the right to private life and should be eliminated.

240. Border checks should be carried out in such a way as to fully respect human dignity and the principles of proportionality and non-discrimination. In this regard, participating States have pledged "[to] promote co-operation between their border services, customs authorities, agencies issuing travel documents and visas, and law enforcement and migration agencies, as well as other competent national structures", with a view to promoting "dignified treatment of all individuals wanting to cross borders, in conformity with relevant national legal frameworks, international law, in particular human rights, refugee, and humanitarian law, and relevant OSCE commitments".[345] In accordance with this commitment, everyone, including women human rights defenders and those belonging to vulnerable or minority groups, such as national, ethnic, religious, linguistic and sexual minorities and persons with disability, among others, should be treated with respect at border checks, including when body searches are conducted, and must not be subjected to humiliating or degrading treatment because of their identity, physical appearance or other factors.

345 Ljubljana 2005, "Border Security and Management Concept: Framework for Co-operation by the OSCE Participating States", paras. 4 and 4.5. In line with this commitment, Article 6 of the Schengen Border Code Regulation, for example, also stipulates that "border guards shall, in the performance of their duties, fully respect human dignity, in particular in cases involving vulnerable persons" and only take measures that are proportionate and non-discriminatory. See Regulation (EC) No. 562/ 2006 of the European Parliament and the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), 15 March 2006.

I. Right to private life

241. According to Article 17 of the ICCPR "[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation" and "[e]veryone has the right to the protection of the law against such interference or attacks". The right to respect for private and family life is also guaranteed by Article 8(1) of the ECHR[346] and Article 11 of the ACHR.

242. Article 8(2) of the ECHR further stipulates that any interference with private life by public authorities must be prescribed by law and necessary in a democratic society in the interests of one of the grounds enumerated in the Convention. The UN Human Rights Committee has emphasized that protection against unlawful interference requires that "[i]nterference authorized by States can only take place on the basis of law, which itself must comply with the provisions, aims and objectives of the Covenant." As regards the concept of arbitrariness, the Committee has pointed out that this was intended "to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances."[347] Moreover, in its jurisprudence the Committee has stressed that the requirement of reasonableness implies that any interference must be proportionate to the end sought, and must be necessary in the circumstances of any given case.[348] Thus, as in the case of other rights that can be restricted under certain limited conditions, participating States should ensure that any interference in the right to private life strictly complies with the principle of legality, necessity and proportionality.

346 Article 8 of the ECHR does not, as the ICCPR, refer specifically to honour and reputation, but in its jurisprudence the European Court of Human Rights has stated that under certain circumstances the right to protection of one's reputation is covered by Article 8 of the Convention as part of the right to respect for private life; see *Chauvy and Others v. France,* Application no. 64915/01, 29 June 2004, para. 70. In the judgement in the case of *Karakó v. Hungary* (Application no. 39311/05, 28 April 2009), the Court stated further that "reputation has only been deemed to be an independent right sporadically (...) and mostly when the factual allegations were of such a seriously offensive nature that their publication had an inevitable direct effect on the applicant's private life" (para. 23). As set out in the sections *Confronting stigmatization and marginalization* and *Freedom of opinion and expression* above, any measures to protect one's honour and reputation must be in full compliance with international standards to ensure that they are not used to unduly curtail the right to freedom of opinion and expression.

347 Human Rights Committee, General Comment No. 16 on Article 17, paras. 3 and 4.

348 See, for example, *Antonius Cornelis Van Hulst v. The Netherlands*, Communication No. 903/1999, UN Doc. CCPR/C/82/D/903/1999, 15 November 2004, para. 7.6. See also *Toonen v. Australia,* Communication No. 488/1992, UN Doc. CCPR/C/50/D/488/1992, 31 March 1994, para. 8.3. Furthermore, the Committee emphasized in its General Comment that even with regard to interferences that conform to the Covenant, relevant legislation must specify in detail the precise circumstances in which interferences may be permitted. A decision to make use of such authorized interference must be made only by the authority designated under the law and on a case-by-case basis; see General Comment No. 16, paras. 7 and 8. The European Court of Human Rights stated that Article 8(2), which provides for an exception to a right guaranteed by the Convention, is to be narrowly interpreted, and the need for interferences in a given case must be convincingly established (*Klass v. Germany,* 1978, para. 42 and F*unke v. France,* 1993, para. 55). Furthermore, the Court stated that it must be satisfied that, whatever system of surveillance is adopted, there exist adequate and effective guarantees against abuse (*Klass v. Germany* para. 50).

243. Participating States have reiterated "the right to the protection of private and family life, domicile, correspondence and electronic communications." Furthermore, they have stated that, "[i]n order to avoid any improper or arbitrary intrusion by the State in the realm of the individual, which would be harmful to any democratic society, the exercise of this right will be subject only to such restrictions as are prescribed by law and are consistent with internationally recognized human rights standards."[349]

244. Effective protection against unlawful and arbitrary interference with one's privacy is of particular importance for human rights defenders not only because they are often at risk of such interference due to their work, but also because respect for the right to privacy is instrumental for the exercise of the right to defend human rights in a number of ways. For example, the UNGA has recognized that the exercise of the right to privacy is important for the realization of the right to freedom of expression and to hold opinions without interference, and is, therefore, one of the foundations of a democratic society.[350] The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has stated that undue interference with an individuals' privacy can directly and indirectly limit the free development and exchange of ideas.[351]

245. Human rights defenders across the OSCE region remain at risk of being targeted by unlawful and arbitrary interference with their privacy. They often report instances of abusive control and surveillance of their work and private life by the security sector, including phone and online communications, which in some cases is used to discredit them both personally and in terms of their work.[352] Such interference can also include unlawful or arbitrary raids and searches of homes and offices or of personal possessions when travelling, arbitrary or intrusive body searches, filming and recording individuals in their private sphere, as well as other forms of surveillance which are unlawful, disproportionate or otherwise arbitrary.

246. As regards searches of a person's home, the Human Rights Committee has stated that these "should be restricted to a search for necessary evidence and should not be allowed to amount to harassment".[353] In addition, it found that in the absence of any explanation from the state party, the search of a home without an arrest

349 Moscow 1991, para. 24.

350 UNGA Resolution 68/167, "The right to privacy in the digital age", UN Doc. A/RES/68/167, adopted on 18 December 2013, preamble.

351 See Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/HRC/23/40, 17 April 2013, para. 24.

352 See "Human rights and the security sector. Round-table with human rights defenders, organised by the Office of the Council of Europe Commissioner for Human Rights", Kyiv 30-31 May 2013, CommDH(2013)17, 17 September 2013, paras. 14 and 49.

353 See General Comment No. 16, para. 8.

warrant amounted to a violation of the right to private life under the ICCPR.[354] Concerning personal and body searches, the Committee has held that "effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched".[355] On stop and search powers of the police, the ECtHR has considered that the use of coercive powers "to require an individual to submit to a detailed search of his person, his clothing and his personal belongings amounts to a clear interference with the right to respect for private life", and that the public nature of a search may "compound the seriousness of the interference because of an element of humiliation and embarrassment."[356] Such interference is justified only if it is "in accordance with the law", pursues a legitimate aim and is "necessary in a democratic society" in order to achieve that aim.[357]

247. The Council of Europe Commissioner for Human Rights has recalled the threats that the Internet can pose for human rights defenders "when repressive governments use information available on the Internet and social networking sites to identify networks of human rights defenders and other activists and persecute them."[358] Indeed, the challenges arising from digital information and communication technologies are an issue of increasing international concern. In its 2013 Resolution on the right to privacy in the digital age, the UNGA drew attention to the fact "that the rapid pace of technological development enables individuals all over the world to use new information and communication technologies and at the same time

354 *Darmon Sultanova v. Uzbekistan,* Communication No. 915/2000, adopted on 30 March 2006, para. 7.9. In its jurisprudence, the European Court of Human Rights has also emphasized that legislation and practice concerning house searches and seizures in order to obtain physical evidence must afford adequate and effective safeguards against abuse (see *Miailhe v. France,* Application no. 12661/87, 25 February 1993, paras. 37-39). As regards the interpretation of the words "private life" and "home", the Court also held that a search of an individual's office can constitute an interference with the rights under Article 8 of the Convention (see *Niemietz v. Germany*, Application no. 13710/88, 16 December 1992, paras. 27-33). In another case, it also held that this may apply to legal persons, such as a search of a company's registered office, branches or other business premises (see *Société Colas Est and Others v. France,* Application no. 37971/97, 16 April 2002).

355 See General Comment No. 16, para. 8. Concerning body searches in the context of travelling across borders see also the section on *Freedom of Movement and human rights work within and across borders*.

356 "Items such as bags, wallets, notebooks and diaries may, moreover, contain personal information which the owner may feel uncomfortable about having exposed to the view of his companions or the wider public." See *Gillan and Quinton v. United Kingdom*, Application no. 4158/05, 12 January 2010, para. 63.

357 *Ibid*. para. 65. In the case in question the Court found a violation of Article 8 since the powers of authorization and confirmation as well as those of stop and search under the applicable law were neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse (para. 87). The Court was of the view that, due to the broad discretion granted to police officers, there was a clear risk of arbitrariness, and furthermore, "a risk that such a widely framed power could be misused against demonstrators and protestors in breach of Article 10 and/or 11 of the Convention" (para. 85).

358 See "4th Quarterly Activity Report 2013 by Nils Muižnieks, Council of Europe Commissioner for Human Rights, 1 October to 31 December 2013", CommDH(2014)3, 12 February 2014, p. 20. More specifically, the Commissioner reported, for example, that during his visit to Azerbaijan he "received information from various interlocutors that security agencies were monitoring online activities or tracking user data in Azerbaijan. In particular, some of the Commissioner's interlocutors reported that the authorities had referred to their Facebook activities or had shown them their private mailbox during interrogations." See "Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, Following his visit to Azerbaijan from 22 to 24 May 2013", CommDH(2013)14, 6 August 2013, paras. 40 and 41.

enhances the capacity of governments, companies and individuals to undertake surveillance, interception and data collection, which may violate or abuse human rights".[359] Similarly, the Council of Europe Committee of Ministers has noted that "[d]ata processing in the information society which is carried out without the necessary safeguards and security can raise major human rights related concerns. Legislation allowing broad surveillance of citizens can be found contrary to the right to respect of private life. These capabilities and practices can have a chilling effect on citizen participation in social, cultural and political life and, in the longer term, could have a damaging effect on democracy."[360] New methods of surveillance and the infiltration of computer systems to detect the personal weaknesses of targeted individuals with a view to undermining their credibility and reputation pose further threats, since such tools may "also be used to undermine, for example, opposition politicians, human rights activists or journalists."[361]

248. The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has raised concern about blanket exceptions to the requirement of judicial authorization that national intelligence agencies enjoy in many countries, including in OSCE participating States.[362] He has stressed that, without adequate legislation and legal standards to ensure the privacy, security and anonymity of communications, journalists, human rights defenders and whis-

359 See A/RES/68/167, adopted on 18 December 2013, preamble.

360 See "Declaration of the Committee of Ministers on Risks to Fundamental Rights stemming from Digital Tracking and other Surveillance Technologies", adopted on 11 June 2013, para. 2.

361 See Parliamentary Assembly of the Council of Europe (PACE), Committee on Legal Affairs and Human Rights, "'Massive Eavesdropping' and 'Additional Protocol to the ECHR on Protection of whistleblowers', Introductory memorandum by the Rapporteur Pieter Omtzigt", Netherlands, AS/JUR (2014) 02, 23 January 2014, para. 21.

362 See A/HRC/23/40, para. 59. Specifically, he referred in this context to the US Foreign Intelligence Surveillance Act that empowered the National Security Agency to intercept communications without judicial authorization, as well as to laws in Germany and Sweden allowing for wiretaps and interception without a warrant. In its 2009 Concluding Observations on Sweden, the Human Rights Committee also noted that the "Law on Signals Intelligence in Defence Operations" afforded the executive wide powers of surveillance with respect to electronic communications and recommended that the "State party should take all appropriate measures to ensure that the gathering, storage and use of personal data not be subject to any abuses, not be used for purposes contrary to the Covenant, and be consistent with obligations under article 17 of the Covenant. To that effect, the State party should guarantee that the processing and gathering of information be subject to review and supervision by an independent body with the necessary guarantees of impartiality and effectiveness." See CCPR/C/SWE/CO/6, 7 May 2009, para. 18. In its 2014 Concluding Observations on the USA adopted on 26 March 2014, the UN Human Rights Committee expressed concern about the surveillance of communications conducted by the National Security Agency (NSA), and noted that the system of oversight of the NSA's activities failed to protect the rights of those affected, while the latter have no access to effective remedies in case of abuse. The Committee called on the state party to ensure that its surveillance activities fully conform with its obligations under the ICCPR, including Article 17, and more specifically that any interference "be authorized by laws that (i) are publicly accessible; (ii) contain provisions that ensure that collection of, access to and use of communications data are tailored to specific legitimate aims; (iii) are sufficiently precise specifying in detail the precise circumstances in which any such interference may be permitted; the procedures for authorizing; the categories of persons who may be placed under surveillance; limits on the duration of surveillance; procedures for the use and storage of the data collected; and (iv) provide for effective safeguards against abuse". See UN Doc. CCPR/C/USA/CO/4, para. 22 (advance unedited version). The Committee had previously expressed concern in its 2006 Concluding Observations on the USA over the monitoring of communication, including by the NSA, without judicial or other independent oversight. See CCPR/C/USA/CO/3, 15 September 2006, para. 21.

tleblowers, for example, cannot be assured that their communications are not subject to state scrutiny. Without strong protections they risk being subjected to arbitrary surveillance activities.[363] In a case arising from the complaint that legislation had given the authorities wide discretion to gather and use information obtained through secret surveillance, the ECtHR recalled the minimum safeguards that should be set out in statute law to avoid abuses, including: "the nature of the offences which may give rise to an interception order; a definition of the categories of people liable to have their communications monitored; a limit on the duration of such monitoring; the procedure to be followed for examining, using and storing the data obtained; the precautions to be taken when communicating the data to other parties; and the circumstances in which data obtained may or must be erased or the records destroyed."[364] Furthermore, the Court reiterated that there must be "adequate and effective guarantees against abuse" in the context of covert surveillance measures, including in relation to "the nature, scope and duration of the possible measures, the grounds required for ordering them, the authorities competent to permit, carry out and supervise them, and the kind of remedy provided by the national law".[365]

249. In a case concerning a member of a human rights organization who had been registered in a "Surveillance Database", the ECtHR found a violation of the right to privacy under the ECHR.[366] The database in question collected information about the applicant's movements within the country, which – as the Court pointed out – amounted to an interference with his private life. Since the creation and maintenance of the database was governed by a ministerial order that was not published

363 A/HRC/23/40, paras. 79 and 51. In general, as the Human Rights Committee pointed out, "[s]urveillance, whether electronic or otherwise, interceptions of telephonic, telegraphic and other forms of communication, wire-tapping and recording of conversations should be prohibited." See General Comment No. 16, para. 8. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression stressed that "[l]egislation must stipulate that State surveillance of communications must only occur under the most exceptional circumstances and exclusively under the supervision of an independent judicial authority." See A/HRC/23/40, para. 81.

364 See *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria,* Application no. 62540/00, 28 June 2007, paras. 76.

365 *Ibid*. para. 77. See also *Liberty v. UK,* Application no. 58243/00, 1 July 2008, in which the Court found the state to be in violation of Article 8 of the ECHR because it did not consider that "the domestic law at the relevant time indicated with sufficient clarity, so as to provide adequate protection against abuse of power, the scope or manner of exercise of the very wide discretion conferred on the State to intercept and examine external communications. In particular, it did not, as required by the Court's case-law, set out in a form accessible to the public any indication of the procedure to be followed for selecting for examination, sharing, storing and destroying intercepted material" (para. 69). In the view of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, anyone should also have a legal right to be notified when they have been subjected to communications surveillance or their communications data has been accessed by the state. The Special Rapporteur recognizes, however, that advance or concurrent notification might jeopardize the effectiveness of the surveillance. Nevertheless he stressed that individuals should be notified once the surveillance has been completed so as to ensure that they can seek redress with respect to the use of communications surveillance measures in their aftermath (see A/HRC/23/40 para. 82). Concerning the widespread practice of telephone tapping in Bulgaria, the Human Rights Committee recommended the state party to ensure that those who were wrongfully monitored are systematically informed thereof and have access to adequate remedies. See "Concluding Observations on Bulgaria", UN Doc. CCPR/C/BGR/CO/3, para. 22.

366 See *Shimovolos v. Russia,* Application no. 30194/09, 21 June 2011.

and was not accessible to the public, the Court ruled that the interference was incompatible with the ECHR.[367] As regards the gathering and storage of personal information in general, the Human Rights Committee stressed that "every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control their files."[368]

250. Participating States have a duty both to ensure that public authorities or officials refrain from engaging in any unlawful or arbitrary interference with the right to private life, but also to protect human rights defenders from similar interference by third parties, including by private security agents, for example.[369] The UN Human Rights Committee has stated that the right to private life "is required to be guaranteed against all such interference and attacks whether they emanate from State authorities or from natural or legal persons."[370]

251. Accordingly, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has pointed out that states should criminalize illegal surveillance by public or private actors.[371] In this regard, the UNGA has called on states to undertake the following: to respect and protect the right to privacy, including in the context of digital communication; to take measures to put an end to and create conditions to prevent violations; to "review their procedures, practices and legislation regarding the surveillance of communications, their interception and the collection of personal data, including mass surveillance, interception and collection"; and to "establish or maintain existing independent, effective domestic oversight mechanisms capable of ensuring transparency, as appropriate, and accountability for State surveillance […]".[372]

367 According to the judgement in *Shimovolos v. Russia,* an extract from the list of persons registered in that database showed that the applicant's name was included in a section entitled "Human Rights Activists"; and "[t]he Surveillance Database contains information about skinheads, human rights activists and other persons allegedly involved in extremist activities. Whenever a person mentioned in the database purchases a train or aeroplane ticket the Interior Department of Transport receives an automatic notification." Since the legal basis was not published and accessible, "[t]he grounds for registration of a person's name in the database, the authorities competent to order such registration, the duration of the measure, the precise nature of the data collected, the procedures for storing and using the collected data and the existing controls and guarantees against abuse are thus not open to public scrutiny and knowledge" (para. 69).

368 See General Comment No. 16, para. 10.

369 In the report on her visit to Ireland, for example, the Special Rapporteur on the situation of human rights defenders noted that she had received reports of surveillance of public roads, private houses and private movements of local residents by private security agents employed by a large business corporation in the context of protests concerning environmental rights. She expressed concerns about the possible impact of such practices on the right to privacy and recommended that surveillance methods be employed only in a lawful and proportionate manner, and that their purpose be communicated to the local residents. See "Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, Addendum. Mission to Ireland (19-23 November 2012)", UN Doc. A/HRC/22/47/Add.3, 26 February 2013, para. 78.

370 General Comment No. 16, para. 1.

371 See HRC/C/23/40, para. 84.

372 See A/RES/68/167, para. 4.

252. As the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has pointed out, the private sector has played a key role in facilitating state surveillance – sometimes as a result of pressure from the authorities, and sometimes voluntarily.[373] In some cases, as the Special Rapporteur has noted, the private sector has been complicit in developing technologies that enable invasive surveillance in contravention of legal standards.[374] Accordingly, he has called on states to refrain from forcing the private sector to implement measures that compromise the privacy, security and anonymity of communication services, and to take measures "to prevent the commercialization of surveillance technologies, paying particular attention to research, development, trade, export and use of these technologies considering their ability to facilitate systematic human rights violations."[375] In accordance with the UN Guiding Principles on Business and Human Rights, participating States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.[376] The Council of Europe Committee of Ministers has encouraged states to bear the risks of digital tracking and other surveillance technologies in mind in their bilateral discussions with third countries, and, where necessary, consider the introduction of suitable export controls to prevent the misuse of technology in order to undermine human rights standards.[377] In light of the increasing risks in this area, participating States should also support initiatives by human rights defenders that aim to strengthen the knowledge and capacity to enhance the safety of their electronic communications.

253. Concerning the use of materials obtained during surveillance, search or seizure, information or data obtained through unlawful or arbitrary interferences with a human rights defender's private life should, in general, be inadmissible for use in legal proceedings against them. While noting that the European Court of Human

373 See HRC/C/23/40, paras. 73 and 74. See also the Introductory Memorandum of the PACE Rapporteur, "'Massive eavesdropping' and the 'Additional Protocol to the ECHR on Protection of whistleblowers', Introductory memorandum by the Rapporteur Pieter Omtzigt", Netherlands, AS/JUR (2014) 02, 23 January 2014, para. 27. The concern about complicity of private actors is particularly pertinent in relation to instances where surveillance functions had been outsourced to private businesses; ibid. para. 52.

374 See HRC/C/23/40, para. 75. Similarly, the Council of Europe Commissioner referred to reports about the installation of technology by a Swedish telecommunications company that enabled law enforcement officials in Azerbaijan to monitor all mobile phone communications, including text messages, Internet activities, and phone calls, without any judicial oversight; see "Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, Following his visit to Azerbaijan from 22 to 24 May 2013", CommDH(2013)14, 6 August 2013, para. 42.

375 See A/HRC/C/23/40, paras. 96 and 97.

376 In this context, participating States should also set out clearly and publicly that human rights defenders perform an important role in society and thus recognize their status and the legitimacy of their work. On the importance of public recognition, as well as the role of non-state actors and the UN Guiding Principles on Business and Human Rights, see the section on *General Principles* above. In addition, the European Commission published a handbook for ICT companies that provides detailed sector-specific guidance on corporate responsibility to respect human rights as set out in the UN Guiding Principles on Business and Human Rights. See European Commission, "The ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights", <http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/csr-ict-hr-business_en.pdf>.

377 See "Declaration of the Committee of Ministers on Risks to Fundamental Rights stemming from Digital Tracking and other Surveillance Technologies", adopted on 11 June 2013, para. 8.

Rights has in some cases taken the approach that a violation of the right to privacy through unlawful methods of obtaining evidence can be established separately without necessarily rendering the trial as a whole as unfair, the UN Special Rapporteur on human rights while countering terrorism has expressed the view "that States and in particular their judicial organs, need to remain vigilant in upholding the position that the use of evidence obtained in breach of human rights or of domestic law renders a trial unfair." [378]

254. More generally, as regards the use of personal information gathered and held on computers, databases or other devices, whether by public authorities or private individuals, the UN Human Rights Committee has stressed that states have to take effective measures to ensure that such information does not reach the hands of persons who are not authorized by law to receive, process and use it, and that it is never used for purposes incompatible with the Covenant.[379] Human rights defenders should be protected from any disclosure of personal data or information to the mass media, in particular if it concerns sensitive or intimate information that may be used to discredit the individual concerned or damage their honour or reputation. The ECtHR has held, for example, that disclosure of sensitive CCTV material to the mass media for broadcast use – without the consent of the individual concerned or without masking their identity – can be a serious interference with the right to respect for private life.[380] The Court has also found that the protection of personal data, not least medical data, was of fundamental importance, and that making it accessible to the public could dramatically affect the individual's private and family life in violation of Article 8 of the ECHR.[381]

255. Furthermore, personal data and information should only be kept as long as justifiable and strictly necessary. The Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, for example, stipulates that "[p]ersonal data undergoing automatic processing shall be […] preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored."[382] In accordance with the jurisprudence of the European Court of Human Rights, authorities also have a positive obligation to provide individuals with an effective and accessible proce-

378 See "Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism", UN Doc. A/63/223, 6 August 2008, para. 34. Also, in relation to criminal cases, the UN Guidelines on the Role of Prosecutors, for example, state that when prosecutors come into possession of evidence against suspects that they know or believe was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, they shall refuse to use such evidence against the suspects. See "Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders", Havana, Cuba, 27 August to 7 September 1990, para. 16.

379 See General Comment No. 16, para. 10.

380 See *Peck v. the United Kingdom,* Application no. 44647/98, 28 January 2003. In the case concerned this was notwithstanding the fact that the footage was recorded in a public place.

381 See *Z v. Finland,* Application no. 22009/93, 25 February 1997.

382 See Council of Europe, "Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data", Article 5.

dure to enable them to obtain access to their personal files held by public authorities within a reasonable time.[383]

256. The Council of Europe Committee of Ministers has recognized that data processing and broad surveillance can undermine the confidentiality rights associated with certain professions, such as the protection of journalists' sources, and can even threaten the safety of the persons concerned.[384] Principle 22 of the UN Basic Principles on the Role of Lawyers provides that "[g]overnments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential."[385] Moreover, OSCE participating States have committed to take "[a]ll reasonable and necessary measures [...] to ensure the respect of the confidentiality of the lawyer-client relationship."[386] They have also committed to ensure that "journalists, including those representing media from other participating States, are free to seek access to and maintain contacts with public and private sources of information and that their need for professional confidentiality is respected."[387] Given the increasing importance of the Internet as a means of mass communication, the need to extend the protection of journalists' sources to other actors has emerged.[388]

257. In addition to recognizing the particular professional needs of human rights defenders who are journalists or lawyers, participating States should also acknowledge the specific needs of other human rights defenders as regards the protection of their privacy rights, including the confidentiality of their communications, in order to protect their sources or the people whose rights they defend. This is particularly important for those whose sources, including witnesses and whistleblowers, face

383 See, for example, *Haralambie v. Romania,* Application no. 21737/03, Information Note on the Court's case-law No. 123, October 2009.

384 See the Council of Europe Committee of Ministers, "Declaration on digital tracking and other surveillance technologies", para. 2. Similarly, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression noted in relation to the privacy, security and anonymity of communications of journalists that "[a]n environment where surveillance is widespread, and unlimited by due process or judicial oversight, cannot sustain the presumption of protection of sources. Even a narrow, non-transparent, undocumented, executive use of surveillance may have a chilling effect without careful and public documentation of its use, and known checks and balances to prevent its misuse"; see A/HRC/23/40, para. 52. Moreover, the European Court of Human Rights has stated "[h]aving regard to the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom, such a measure cannot be compatible with Article 10 (art. 10) of the Convention unless it is justified by an overriding requirement in the public interest"; see *Goodwin v. the United Kingdom,* Application no. 17488/90, 27 March 1996, para. 39. As regards lawyers, the UN Human Rights Committee, for example, recommended the Netherlands to ensure the exclusion of communications protected by the privilege of confidentiality from tapping. The Committee was concerned that recordings of telephone conversations involving professionals who have a confidentiality duty, especially lawyers, were not safeguarded in a manner that preserved lawyer-client confidentiality. See CCPR/C/NLD/CO/4, 25 August 2009, para. 14.

385 See "Basic Principles on the Role of Lawyers", Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

386 See Brussels 2006, "Brussels Declaration on Criminal Justice Systems".

387 See Vienna 1989, "Co-operation in Humanitarian and Other Fields", para. 40.

388 See "Shaping policies to advance media freedom", OSCE Representative on Freedom of the Media Recommendations from the Internet 2013 Conference, Recommendation 3, https://www.osce.org/fom/100112.

particular risks for providing information to them, as well as for those who work with people, including victims of trafficking or individuals leaving violent criminal or extremist groups, who are at heightened risk of attacks as a result of turning to human rights defenders for assistance.

258. Certain groups of human rights defenders also have specific needs with regard to the protection of their private life due to the nature of violations and abuses that they frequently face. For example, the UNGA has recognized that information technology-related violations and abuses against women, including women human rights defenders, are a growing concern and require effective responses. Such violations and abuses may include online harassment, cyberstalking, the violation of privacy, censorship and the hacking of e-mail accounts, mobile phones and other electronic devices, with a view to discrediting the victim and/or inciting other violations and abuses against them.[389]

J. Right to access and communicate with international bodies

259. As human rights are not only an internal affair but are of direct and legitimate concern to all participating States,[390] communicating information about human rights to international bodies, including international and regional human rights mechanisms, is both a recognized right requiring protection and a legitimate human rights activity.

260. The OSCE commitments have repeatedly recognized this right.[391] The UN Declaration on Human Rights Defenders places a special emphasis on the importance of this right, referring to it in Article 5 and Article 9(4), as an important element of the right to defend human rights as well as a stand-alone right.[392] Both the UN General Assembly and the Human Rights Council have reaffirmed the right of everyone, individually and in association with others, to unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights.[393]

389 See A/RES/68/181, adopted on 18 December 2013, preambular para. 12.

390 Moscow 1991, Preamble.

391 See Copenhagen 1990, paras. 10.4 and 11.3. See also Vienna 1989, para. 26, which reaffirms "the right of persons to observe and promote the implementation of CSCE provisions and to associate with others for this purpose", and contains the commitment of participating States to "facilitate direct contacts and communication among these persons, organizations and institutions within and between participating States".

392 The UN Declaration on Human Rights Defenders states in Article 5 that "[f]or the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: [...] (c) To communicate with non-governmental or intergovernmental organizations." Article 9(4) of the Declaration states that everyone has the right "individually and in association with others, to unhindered access and communication with international bodies with general or specialized competence to receive and consider communications on matters of human rights and fundamental freedoms."

393 See UNGA Resolution A/RES/68/181, para. 18, and UN Human Rights Council Resolution A/HRC/RES/22/6, para. 13. See also "Cooperation with the United Nations, its representatives and mechanisms in the field of human rights", Resolution A/HRC/RES/24/24, adopted on 27 September 2013, para. 1.

261. Access to international bodies and the right to communicate with them represents an entitlement that is embedded in the foundations of all international institutions, including the human rights mechanisms under the auspices of the UN, the OAS, the EU, the Council of Europe and the OSCE. Furthermore, these international human rights mechanisms depend on the information submitted by individuals and groups in order to support the implementation of international human rights standards by states.[394] Therefore, any form of reprisal against human rights defenders for providing information to international bodies, or otherwise obstructing their interaction with these bodies, is both a human rights violation and, at the same time, undermines the functioning of mechanisms with which states have committed to co-operate in good faith. The UN General Assembly and the Human Rights Council have both urged states to refrain from and ensure protection from any such intimidation or reprisals against human rights defenders as well as their family members and associates.[395]

262. International treaties, including the CAT and the OPCAT, the Optional Protocol to CEDAW and the Optional Protocol to the ICESCR, contain specific provisions obliging states to protect individuals against ill-treatment or intimidation motivated by a complaint or other form of communication.[396] In this regard, the Committee against Torture has designated rapporteurs to follow-up on any allegations of reprisals under the relevant provision of the CAT, which requires States to ensure that complainants and witnesses are protected against ill-treatment or intimidation as a consequence of their complaint or any evidence given. Other UN Treaty Bodies also devote special attention to the issue of their communication with human rights defenders and human rights NGOs. For example, the UN Human Rights Committee has underlined the importance of communication and co-operation with NGOs working on human rights,[397] and has stressed that any reprisals against those who communicate with the Committee are unacceptable.[398] The Committee on Enforced Disappearances, for example, has also included in its rules of procedure specific provisions about reprisals and how to react to them.[399]

394 UN Special Rapporteur on the situation of human rights defenders, "Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms", July 2011, p. 51.

395 See UNGA Resolution A/RES/68/181, para. 17, and Human Rights Council Resolution A/HRC/RES/22/6, para. 14.

396 "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", Article 13; "Optional Protocol to the Convention against Torture", Article 15; "Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women", Article 11; "Optional Protocol to the International Covenant on Economic, Social and Cultural Rights", Article 13.

397 UN Human Rights Committee, "The Relationship of the Human Rights Committee with Non-governmental Organizations", CCPR/C/104/3, 4 June 2012.

398 In its General Comment No. 33, "The Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights", the Human Rights Committee noted that "States parties are obliged not to hinder access to the Committee and to prevent any retaliatory measures against any person who has addressed a communication to the Committee" (UN Doc. CCPR/C/GC/33, 25 June 2009, para. 4).

399 See "Rules of Procedure of the UN Committee on Enforced Disappearances", UN Doc. CED/C/1, 22 June 2012, Rules 63(2), 95(4) and 99.

263. In spite of OSCE commitments and international obligations, in a number of OSCE participating States, individuals and groups are not able to submit freely and without fear of reprisals statements, reports or other monitoring and research materials, complaints and other communications to relevant international bodies. In addition, their ability to participate freely in debates and to meet and otherwise co-operate with these bodies, whether in their own country or abroad, is sometimes significantly curtailed, including as a result of threats, warnings, travel bans or smear campaigns which they are subject to for engaging with them. NGOs providing information to international mechanisms have reported that they were "monitored" by law enforcement authorities, or that their offices and private homes of staff were searched and broken into. Some have reportedly had their passports confiscated or were prevented from boarding planes to travel to international meetings, while others have faced retaliation upon their return. In some countries, the authorities apply legislation that prohibits the propagation of "false information" deemed damaging to the country's reputation or similar laws to criminalize human rights defenders for activities related to human rights monitoring and for reporting the results to international bodies. The UN Committee against Torture, for example, has expressed concern about overbroad criminal provisions concerning treason, which can be interpreted as prohibiting the sharing of information on human rights issues with the Committee or with other human rights organs.[400] Reprisals are often linked to multiple forms of human rights violations, including undue restrictions on freedom of movement and violations of the right to liberty and security, freedom of association and others.

264. The annual reports of the UN Secretary General on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights have illustrated that reprisals against persons co-operating with the United Nations are a problem of growing concern, including in a number of OSCE participating States. In the context of their monitoring of reprisals, the UN has also reported receiving allegations of acts of intimidation and reprisal as a result of co-operation with

400 See "Concluding Observations: Russian Federation", UN Doc. CAT/C/RUS/CO/5, 11 December 2012, para. 12. Thus, the Committee has called on the state party to "[e]nsure that no individual or group will be subjected to prosecution for communicating with, or for providing information to, the Committee against Torture, the Sub-Committee on Prevention of Torture or the United Nations Voluntary Fund for Victims of Torture or to other United Nations human rights organs in performing their respective mandates"; see *ibid*. para. 12(b). Furthermore, it also expressed specific concern about legislation requiring organizations that receive financial support from foreign sources to register and identify themselves publicly as "foreign agents"; see ibid. para. 12. Subsequently, the Committee received allegations that charges were brought against two organizations and its leadership under these provisions, in relation to information submitted by these two organizations to the Committee. See "Letters sent by the Chairperson and the Rapporteur on reprisals to the Russian Federation on 17 and 28 May 2013", http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/TBSearch.aspx?Lang=en&TreatyID=1&DocTypeID=130. In its Concluding Observations on Tajikistan, the Committee against Torture also expressed serious concern about reports of harassment and intimidation of human rights defenders following their meetings with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment during his visit to Tajikistan in May 2012, and about the dissolution on administrative grounds of a human rights organization that had engaged with the Special Rapporteur during his visit. See Committee against Torture, "Concluding Observations: Tajikistan", UN Doc. CAT/C/TJK/CO/2, 20 November, 2012, para. 15.

regional organizations.[401] The Human Rights Council has expressed concern at "the continued reports of intimidation and reprisals against individuals and groups who seek to co-operate or have co-operated with the United Nations, its representatives and mechanisms in the field of human rights, and at the seriousness of reported reprisals, including violations of the right of the victim to life, liberty and security of person, and violations of obligations under international law prohibiting torture and cruel, inhuman or degrading treatment."[402] In this regard, the UN General Assembly and the Human Rights Council have urged states to refrain from, and ensure adequate protection from, any acts of intimidation or reprisals. Furthermore, they have called on states to fulfil their duty to end impunity for any such acts by bringing the perpetrators to justice and by providing an effective remedy for the victims, and to avoid legislation that has the effect of undermining the right to unhindered access to and communication with international institutions.[403] Echoing PACE, which has expressed serious concern about illicit pressure on lawyers who defend applicants before the ECtHR and other acts of intimidation, the Council of Europe Committee of Ministers has called on states to refrain from putting pressure on applicants, their lawyers and members of their family with the aim of deterring applications to the Court, so as to effectively protect them from such pressure and identify and appropriately investigate all cases of alleged interference with the right of individual application to the Court.[404]

265. When national mechanisms for human rights protection are ineffective, international systems may represent the only or last resort for legal redress or for the promotion and protection of human rights. Information submitted to international bodies, in particular human rights mechanisms, is sometimes the only way for someone from outside of a country to learn about the human rights situation in that country. Under these circumstances, states often perceive the transfer of such information as presenting the country, and its government, in a bad light, as

401 See A/HRC/24/29, 31 July 2013, paras. 49 and para. 14 (concerning allegations of reprisals for communicating with regional organizations). See also the previous reports of the UN Secretary General on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights: UN Doc. A/HRC/21/18, 13 August 20102; UN Doc. A/HRC/18/19, 21 July 2011; and UN Doc. A/HRC/14/19, 7 May 2010.

402 A/HRC/RES/24/24, Preamble.

403 See UNGA Resolution A/RES/68/181, para. 17; and Human Rights Council Resolution A/HRC/RES/22/6 para. 14. See also A/HRC/RES/24/24, which encourages states to consider setting up a national focal point to address acts of intimidation and reprisals against individuals and groups communicating with the United Nations, its representatives and mechanisms in the field, see para. 8.

404 See Council of Europe Committee of Ministers, "Resolution CM/Res(2010)25 on member states' duty to respect and protect the right of individual application to the European Court of Human Rights", 10 November 2010, paras. 1-2 and 4. The Parliamentary Assembly of the Council of Europe (PACE) made almost identical recommendations in its 2007 Resolution (see PACE Resolution 1571 (2007), "Council of Europe member states' duty to co-operate with the European Court of Human Rights", paras. 17.1.-17.3). In the Resolution, the Assembly expressed its grave concerns "about the fact that a number of cases involving the alleged murder, disappearance, beating or threatening of applicants initiating cases before the Court have still not been fully and effectively investigated by the competent authorities", and noted that illicit methods of applying pressure on lawyers who defended applicants before the Court "included trumped-up criminal charges, discriminatory tax inspections and threats of prosecution for 'abuse of office'. Similar pressure has been brought to bear on NGOs who assist applicants in preparing their cases." Such acts of intimidation have prevented alleged victims of violations from bringing their applications to the Court, or led them to withdraw their applications (see paras. 5-7).

such information may disclose the authorities' responsibility for human rights violations, as well as corruption. However, OSCE participating States have committed to respect human rights and the right to defend human rights and fundamental freedoms.[405] They have also confirmed the important contribution of individuals, groups and associations in assisting states to ensure compliance with their OSCE human dimension commitments.[406] They should therefore also respect and protect the right of human rights defenders to share information with international bodies.

266. In order to strengthen the protection of human rights in their countries, communication with international bodies, in particular human rights mechanisms, should be considered and recognized as a routine activity, and an important one. Participating States should therefore, take proactive steps to facilitate the exercise of the right of human rights defenders to communicate with such bodies. For example, as routinely recommended by UN Treaty Bodies, states should translate relevant treaties, concluding observations and recommendations from the review of state reports, case-law and other relevant documents into local languages, and should disseminate these widely to raise awareness about international human rights mechanisms and to encourage their use.[407] Similarly, states should disseminate recommendations made by other human rights mechanisms, as well as standards and jurisprudence from regional human rights mechanisms and other institutions. They should also publicise information about how to submit complaints to international and regional human rights mechanisms and institutions, including regional human rights courts, and otherwise facilitate the use of these mechanisms when required.

267. UN Treaty Bodies also routinely request that states actively consult with civil society when preparing periodic reports on their implementation of the relevant human

405 Vienna 1989, para. 13.5; UN Declaration on Human Rights Defenders, Article 1.

406 See, for example, Moscow 1991.

407 See, for example, the following recommendation of the Human Rights Committee, similar forms of which can be found in all Concluding Observations made following the review of a state report: "[t]he State party should widely disseminate the Covenant, the two Optional Protocols to the Covenant, the text of the second periodic report, the written responses that it has provided in response to the list of issues drawn up by the Committee and the present concluding observations so as to increase awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The Committee also suggests that the report and the concluding observations be translated into the other official language of the State party." See Human Rights Committee, "Concluding Observations: Bosnia and Herzegovina," UN Doc. CCPR/C/BIH/CO/2, 13 November 2012, para. 22. Similarly, the Committee on the Rights of the Child has stated that "[t]he Committee further recommends that the combined second to fourth periodic reports and written replies by the State party and the related recommendations (concluding observations) be made widely available in the languages of the country, including (but not exclusively) through the Internet, to the public at large, civil society organizations, media, youth groups, professional groups and children, in order to generate debate and awareness of the Convention and the Optional Protocols thereto and of their implementation and monitoring." See Committee on the Rights of the Child, "Concluding Observations: Bosnia and Herzegovina," UN Doc. CRC/C/BIH/CO/2-4, 29 November 2012, para. 81.

rights treaty.[408] Similarly, states are encouraged to prepare national reports and other information for the Universal Periodic Review (UPR) of the Human Rights Council through a broad consultation process at the national level involving all relevant stakeholders.[409] Any such consultations should be open, inclusive and effective. In carrying out such consultations, participating States should respect the right of human rights defenders to present their own reports or submissions as an alternative to the state report. In recognizing the value of civil society contributions, participating States should proactively reach out to civil society and facilitate their active engagement with international human rights mechanisms and institutions, including by publicizing relevant information about upcoming reviews of the human rights situation in the country, as well as the timeframe and modalities for submitting information to the relevant mechanism or institution carrying out the review.

268. During visits of international bodies, in particular human rights mechanisms and institutions, including UN Special Procedures and those under the auspices of the OSCE, the Council of Europe and the IACHR, states should ensure that human rights defenders can interact freely and safely with the representatives of these bodies, and that they can do so confidentially.[410]

408 See, for example, Human Rights Committee "Concluding Observations: Bosnia and Herzegovina," UN Doc. CCPR/C/BIG/CO/2, 13 November 2012, para. 22, which states: "[t]he Committee also requests the State party, when preparing its third periodic report, broadly consult with civil society and non-governmental organizations."

409 See UN Human Rights Council, "Institution-building of the United Nations Human Rights Council", Resolution A/HRC/RES/5/1, Annex, para. 15.

410 According to the terms of reference for the conduct of country visits adopted by the UN special rapporteurs/representatives, the inviting government should give, inter alia, the following guarantees and facilities:

"(a) Freedom of movement in the whole country, including facilitation of transport, in particular to restricted areas;

(b) Freedom of inquiry, in particular as regards:

(i) Access to all prisons, detention centres and places of interrogation;

(ii) Contacts with central and local authorities of all branches of government;

(iii) Contacts with representatives of non-governmental organizations, other private institutions and the media;

(iv) Confidential and unsupervised contact with witnesses and other private persons, including persons deprived of their liberty, considered necessary to fulfil the mandate of the special rapporteur; and

(v) Full access to all documentary material relevant to the mandate;

(c) Assurance by the Government that no persons, official or private individuals who have been in contact with the special rapporteur/representative in relation to the mandate will for this reason suffer threats, harassment or punishment or be subjected to judicial proceedings; [...]". See E/CN.4/1998/45, Appendix V.

IV. FRAMEWORK FOR IMPLEMENTATION OF THE GUIDELINES

National implementation

269. In accordance with Article 2 of the UN Declaration on Human Rights Defenders, states shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the Declaration are effectively guaranteed. The UN Human Rights Council has invited states "to seek assistance [...] in the process of reviewing, amending or developing legislation that affects or would affect, directly or indirectly, the work of human rights defenders".[411] In addition to legislation, states should also review their policies and practices to ensure that these do not put human rights defenders at risk or obstruct their work, but instead empower them in carrying out their activities. They should carry out such reviews in consultation with civil society and seek the technical assistance of international agencies, including ODIHR, if required.[412]

270. A baseline review by participating States of laws and practices affecting human rights defenders would be a significant first step towards ensuring the implementation of the present Guidelines as well as other relevant standards and commitments. Subsequent monitoring, on an ongoing basis, would serve to track progress and identify remaining challenges. Furthermore, states should take appropriate measures to ensure that effective follow-up measures are carried out based on the results of reviews and monitoring activities, including through introducing legislative and other changes, drawing up multi-year national action plans and devising joint activities with human rights defenders, NHRIs and other relevant stakeholders to promote the status and work of human rights defenders and create and consolidate a safe and enabling environment.

271. While noting that members and staff of independent NHRIs that operate in compliance with the Paris Principles can be considered human rights defenders, the UN Special Rapporteur on the situation of human rights defenders has emphasized the important role that NHRIs can play in the protection of human rights defenders, including through the following: receiving and considering complaints by human rights defenders; advocacy activities in favour of a conducive work environment for human rights defenders; interacting with international and regional human rights mechanisms and providing information about the situation of human rights defenders in their country to these mechanisms; through public support in cases of human rights violations against human rights defenders; monitoring the situation of human rights defenders in prisons or detention centres; and providing legal assistance or engaging in conflict mediation in cases of disputes between human

411 A/HRC/RES/22/6, para. 22.

412 In particular, the Human Rights Council has stressed "the valuable contribution of national human rights institutions, civil society and other stakeholders in providing input to States on the implications of draft legislation when such legislation is being developed or reviewed to ensure that it is in compliance with international human rights law." See A/HRC/RES/22/6, para. 17.

rights defenders and the authorities or other parts of society.[413] NHRIs can also perform an important role in monitoring the implementation of the present Guidelines, including in carrying out the baseline review mentioned above.

272. Participating States should ensure that NHRIs have a strong mandate in accordance with the Paris Principles, as well as the necessary resources to perform this role effectively and independently. Participating States have committed to facilitate the establishment and strengthening of independent national institutions in the area of human rights and the rule of law.[414] In this vein, the OSCE Parliamentary Assembly has urged participating States "to establish national human rights institutions in accordance with the Paris Principles, to take the appropriate measures to ensure their independence and all steps necessary to promote their working in partnership with and as advocates for other representatives of civil society."[415] The Council of Europe Committee of Ministers has also called on member states of the organization to "consider giving or, where appropriate, strengthening competence and capacity to independent commissions, ombudspersons, or national human rights institutions to receive, consider and make recommendations for the resolution of complaints by human rights defenders about violations of their rights".[416]

273. The OSCE Parliamentary Assembly has recommended that Parliamentary Delegations to the OSCE enhance their engagement with human rights defenders and NHRIs in their respective states.[417] Similarly, PACE has emphasized that parliamentarians have a major responsibility in shaping the political context and the working environment of human rights defenders and monitoring human rights developments.[418] More specifically, PACE has called on national parliaments of Council of Europe member States to, inter alia, ensure that legislation relating to defenders and their work is in conformity with international standards; adopt and

413 See report of the UN Special Rapporteur to the Human Rights Council, UN Doc. A/HRC/22/47, 16 January 2013. In its General Observations, the Sub-Committee on Accreditation (SCA) of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) reminded that "National Institutions are established by States for the specific purpose of advancing and defending human rights at the national level". Furthermore, it stressed that – as an essential requirement of the Paris Principles – NHRIs should develop, formalize and maintain working relationships with a range of human rights bodies and institutions, including civil society and non-governmental organizations. "The importance of formalizing clear and workable relationships with other human rights bodies and civil society, such as through public memoranda of understanding, serves as a reflection of the importance of ensuring regular, constructive working relationships and is key to increasing the transparency of the NHRI's work with these bodies." See International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, "ICC SCA General Observations as adopted in Geneva in May 2013", pages 6 and 21-22.

414 Copenhagen 1990, para. 27.

415 OSCE Parliamentary Assembly, "Resolution on strengthening OSCE engagement with human rights defenders and national human rights institutions", para. 15, *Kyiv Declaration and Resolutions adopted at the sixteenth annual session*, Kyiv, 5 to 9 July 2007, pp. 28-30, <http://www.oscepa.org/publications/declarations/2007-kyiv-declaration/250-kyiv-declaration-english/file>.

416 *Op. cit*. "Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities", para. 2 (v).

417 OSCE Parliamentary Assembly, "Resolution on strengthening OSCE engagement with human rights defenders and national human rights institutions", para. 20.

418 PACE Resolution 1660 (2009), para. 3.

implement non-legislative texts, such as national action plans or strategies, on the protection of human rights defenders; develop and maintain regular contacts with human rights defenders; provide public recognition for the work of human rights defenders (e.g., by organizing hearings and parliamentary debates and by establishing awards for human rights defenders); support assistance and protection measures for human rights defenders at risk; and provide publicity for protection mechanisms and the UN and Council of Europe declarations on human rights defenders.[419] Parliamentarians in OSCE participating States should be encouraged to take these and other measures, including with a view to promoting the present Guidelines and effective follow-up thereof.

274. In 2010, the UN Human Rights Council encouraged states "to create and strengthen mechanisms for consultation and dialogue with human rights defenders, including through establishing a focal point for human rights defenders within the public administration where it does not exist, with the aim of, ***inter alia,*** identifying specific needs for protection, including those of women human rights defenders, and ensuring the participation of human rights defenders in the development and implementation of targeted protection measures".[420] Where human rights defenders face major threats to their dignity as well as physical and psychological integrity, participating States should develop and implement appropriate national policies, programmes or mechanisms for the protection of human rights defenders. Where necessary, participating States should also consider setting up or designating consultative and co-ordinating bodies to administer the implementation of such protection programmes and policies. Where such bodies exist or are created, they should also be tasked with leading the baseline review and subsequent monitoring of the implementation of the present Guidelines, as well as other relevant standards and commitments. Depending on their mandate and the specific circumstances in the country, such bodies should include, among others, representatives of the following: relevant ministries; law enforcement and the judiciary; national, regional and local authorities; parliament; and national human rights institutions (NHRIs), as well as independent human rights defenders representing the broad range and diversity of human rights defenders active in the country. Where relevant, consideration should also be given to include inter-governmental organizations, including their field presences.

275. The UNGA has encouraged states to translate the UN Declaration on Human Rights Defenders and to take measures to ensure its widest possible dissemination at the national and local levels, including among public officials and non-state actors. It

419 *Ibid*. para. 13. In its 2012 Resolution on the situation of human Rights defenders in Council of Europe member States, the Assembly reiterated its call on national parliaments and their members to ensure that "legislation relating to human rights defenders and their work is in conformity with international standards, and they refrain from adopting laws imposing undue restrictions and administrative burdens on human rights defenders, or, if appropriate, repeal such laws", and that "human rights NGOs and defenders are involved in the process of drafting legislation concerning them through proper public consultations." See Resolution 1891 (2012), para. 6.

420 UN Human Rights Council Resolution A/HRC/RES/13/13 para. 5. The Parliamentary Assembly of the Council of Europe also called on member States of the organization to "set up appropriate infrastructures and assistance programmes for human rights defenders at risk". See PACE Resolution 1660 (2009), para. 12.1.

has also recommended states to promote awareness and training in regard to the Declaration, in order to enable public officials and authorities, including the judiciary, to observe the provisions of the Declaration and thus promote better understanding of and respect for human rights defenders and their work.[421] OSCE participating States are encouraged to take similar steps with regard to the present Guidelines. They should disseminate the Guidelines widely, including to relevant professional groups and private actors, and use them to provide human rights education and training to relevant public officials, educators and others. They should co-operate with ODIHR in promoting awareness of the Guidelines, relevant training and educational activities, as well as support initiatives by independent NHRIs and civil society towards that end.

Protection of human rights defenders in other OSCE participating States and third countries

276. In recognition of the fact that the protection of human rights defenders is not only a matter pertaining to states' internal affairs, participating States should consider drawing up operational guidelines for relevant public officials on measures to support and protect human rights defenders in other OSCE participating States, as well as in third countries outside of the OSCE region. The Council of Europe Committee of Ministers has recommended that states "provide measures for swift assistance and protection to human rights defenders in danger in third countries, such as, where appropriate, attendance at and observation of trials and/or, if feasible, the issuing of emergency visas".[422]

277. The European Union Guidelines for the protection of human rights defenders provide some guidance for EU missions abroad (i.e., for diplomatic missions of EU member states and European Commission delegations) about measures to support human rights defenders in third countries, and recommend that EU missions should generally adopt a proactive policy towards human rights defenders.[423] In 2009, PACE called on member states of the Council of Europe that are also EU

421 See A/RES/66/164, paras. 11 and 12. See also A/RES/68/181, 18 December 2013, para. 1. For related recommendations by the UN Special Rapporteur on the situation of human rights defenders, see, for example, her report A/HRC/25/55 paras. 131 (c) and (g), which recommend wide dissemination of the declaration and that educational programmes, especially those addressed to law enforcement and public officials, include modules that recognize the role played by human rights defenders in society, and that the necessary training is provided to public officials on the role and rights of human rights defenders. To increase awareness among the judicial, legislative and administrative authorities, civil society and NGOs, as well as the general public, UN Treaty Bodies also routinely call on states to translate and disseminate the relevant human rights instruments and reports on states' implementation thereof, as well as the Committees' concluding observations and recommendations. See the standard recommendation that the UN Human Rights Committee includes in its Concluding Observations following the consideration of a state party report, for example, CCPR/C/DEU/CO/6, 12 November 2012, para. 19.

422 Council of Europe Committee of Ministers Declaration, para. 2(xi).

423 "Ensuring Protection - European Union Guidelines on Human Rights defenders", <http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesDefenders.pdf>, para. 10. The Guidelines were adopted initially in 2004 and revised in 2008.

member states, to make full use of the EU Guidelines and to implement the principles contained therein within their own borders.[424]

278. A study commissioned by the European Parliament to assess the implementation of the EU Guidelines found many good practices in place, but also identified gaps in the implementation of the Guidelines, due in part to limited knowledge of the content of the Guidelines both among diplomats as well as among human rights defenders, and a lack of understanding of how to engage in human rights issues as per the EU Guidelines.[425] OSCE participating States that are also EU member states should, therefore, ensure the wide dissemination of the EU Guidelines among their diplomatic missions and other relevant government officials, and see to it that members of diplomatic missions and other officials receive adequate training on the implementation of the Guidelines, and that they accord high priority to carrying out the measures envisaged therein. Other participating States should take similar steps on the basis of their own national or supplementary guidelines.[426]

279. Examples of good practice in this regard are the guidelines on the protection of human rights defenders issued by the Norwegian[427] and Swiss[428] governments to their foreign services and representations abroad. These guidelines foresee a number of possible practical measures to support human rights defenders through their diplomatic missions in the country concerned, including, for example: maintaining direct contact with human rights defenders in order to exchange information and legitimize their work; observing court cases and visiting prisons and persons under house arrest; raising concerns about the situation of human rights defenders with the competent authorities of the host country (including through formal and informal channels, demarches and interventions); increasing the visibility of human rights work through the use of the media, press releases, interviews and public statements and drawing attention to individual cases of human rights defenders; and co-operating with international actors, other diplomatic rep-

424 PACE Resolution 1660 (2009), para. 12.3.

425 See Karen Bennett, “Assessing the implementation of the European Union Guidelines on Human Rights Defenders – The cases of Kyrgyzstan, Thailand and Tunisia”, European Parliament, Directorate-General for external Policies of the Union, June 2013, <http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/410221/EXPO-DROI_ET(2013)410221_EN.pdf>. Based on the cases studies from three different geographical areas, the report made a number of recommendations towards strengthening the implementation of the Guidelines. The Special Rapporteur on the situation of human rights defenders has also recommended developing simple structural and outcome indicators to foster the implementation and evaluation of the European Union Guidelines on Human Rights Defenders. See the report of her visit to Ireland, UN Doc. A/HRC/22/47/Add.3, 26 February 2013 para. 111(g).

426 The Swiss Guidelines recognize, for example, the importance of specific training courses for those embassy staff who work in particularly close contact with human rights defenders. “These specifically trained staff will then be able to act as focal points and multipliers, and pass on their knowledge to their colleagues.” (p. 17)

427 “Norway’s efforts to support human rights defenders, Guide for the foreign service”, Norwegian Ministry of Foreign Affairs, December 2010, <http://www.regjeringen.no/en/dep/ud/documents/handbooks_brochures/2010/hr_defenders_guide.html?id=633052>.

428 “Swiss Guidelines on the Protection of Human Rights Defenders”, Federal Departmental of Foreign Affairs (FDFA), December 2013, < http://www.admin.ch/aktuell/00089/index.html?lang=en&msg-id=51322>.

resentations, and with NHRIs in the country in order to share information and co-ordinate contacts with human rights defenders. Both the Norwegian and the Swiss guidelines also acknowledge that in certain cases human rights defenders require support – including financial and practical assistance – in order to move temporarily to another city or a nearby country.[429] All OSCE participating States should engage their diplomatic missions in supporting human rights defenders and enhancing their protection whenever required. In particular, they should ensure that in taking such measures they also reach out to human rights defenders located outside of the capital in rural and remote areas of the country. [430]

280. In addition to acting through its diplomatic representations abroad, the Norwegian guidelines also highlight the importance of raising concerns regarding the general situation of human rights defenders and individual cases in political meetings and during official visits. The guidelines also recommend, for example, that information on the situation of human rights defenders be included in the background material prepared for the political leadership before an official visit, and that during such visits officials should consider meeting with representatives of civil society and human rights defenders in the country in question.[431] Other participating States should also take such actions.

281. Likewise, the Dutch government has developed an action plan as part of its external human rights policy, which states that the Dutch Ministry of Foreign Affairs "will facilitate the expedited issue of Schengen short-stay visas for human rights defenders in distress who are seeking a temporary stay in the Netherlands".[432] Similarly, the Swiss Guidelines state that "[s]hould a detailed examination of the case at hand confirm that leaving the country is the most expedient option the [Swiss Ministry of Foreign Affairs] will intervene to permit a degree of flexibility in the Swiss visa awarding process."[433] Further to the recommendation of the Council of Europe Committee of Ministers mentioned above, PACE has recommended that states establish humanitarian visa schemes or take other appropriate measures,[434] and has called specifically on national parliaments to "support

429 See Norwegian Guidelines, p. 14, and Swiss Guidelines, p. 15.

430 The above-mentioned study on the implementation of the EU Guidelines found that, for example, visits or trial observations by diplomatic missions rarely happen outside of the capitals in the countries reviewed (see European Parliament, Directorate-General for external Policies of the Union, "Assessing the implementation of the European Union Guidelines on Human Rights Defenders – The cases of Kyrgyzstan, Thailand and Tunisia", June 2013). The Swiss Guidelines highlight the need, for example, to also visit human rights defenders in rural areas in order to provide moral support and improve their protection (see Swiss Guidelines, p. 12).

431 See Norwegian Guidelines, p. 20.

432 See "Action Plan for Human Rights Defenders", <http://www.government.nl/issues/human-rights/supporting-human-rights-defenders (Dutch Action Plan)>, p. 5.

433 Swiss Guidelines, p. 16. The Special Rapporteur on the situation of human rights defenders has singled out Ireland as an example of good practice, after the country set up a dedicated humanitarian visa scheme in 2006 that provides those human rights defenders facing temporary security issues with a fast-track mechanism to travel to Ireland for short periods of time for respite. See HRC/22/47/Add.3, 26 February 2013, para. 56.

434 See Council of Europe Committee of Ministers Declaration, para. 2(xi) and PACE Resolution 1660 (2009), para. 12.2.

assistance and protection measures for human rights defenders at risk, such as the issue of emergency visas."[435] Together with civil society organizations and human rights defender networks, parliamentarians can also play an important role in facilitating the support of national or local authorities and public or private institutions for hosting or financially assisting the individual concerned after relocation.

282. As the Special Rapporteur on the situation of human rights defenders has pointed out, development aid is also an important tool to ensure the protection of human rights defenders in third countries as well as a safe and enabling environment for their work. In this context, she has underlined the importance of a coherent and sustainable response from donors in cases of human rights violations, as well as the need for funding to support the capacity and safety of human rights defenders as part of development aid.[436]

International co-operation and human rights mechanisms

283. In emphasizing their joint responsibility to uphold OSCE principles – with particular reference to democracy, the rule of law and respect for human rights – OSCE participating States have reaffirmed their determination to co-operate within the OSCE and with its institutions and representatives.[437] OSCE participating States have committed themselves to joint measures of co-operation, both in the OSCE and through those organizations of which they are members, to offer assistance towards enhancing compliance with OSCE principles and commitments, and to strengthen existing co-operative instruments and develop new ones in order to respond efficiently to requests for assistance from participating States.[438] As such, they have reaffirmed that "[t]he OSCE will continue to be an active player across its region, using its institutions – the Office for Democratic Institutions and Human Rights (ODIHR), the High Commissioner on National Minorities (HCNM), and the Representative on Freedom of the Media (RFoM) – its field operations and its Secretariat to the full. They are important instruments in assisting all participating States to implement their commitments, including respect for human rights, democracy and the rule of law."[439] In order to create an environment where human rights defenders can operate freely, the European Union Guidelines have committed to strengthen the existing regional mechanisms for the protection of human rights defenders, including ODIHR and the Council of Europe Commissioner for Human Rights, and to support the Special Procedures of the UN Human Rights Council, including the Special Rapporteur on the situation of human rights defenders.[440]

435 PACE Resolution 1660 (2009), para. 13.5.

436 See, for example, A/HRC/22/47/Add.3, 26 February 2013, para. 65.

437 Istanbul 1999, "Charter for European Security: III. Our Common Response", para. 14.

438 *Ibid*.

439 Maastricht 2003, "OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century", para. 20.

440 See the European Union Guidelines, para. 12, pp. 7-9, and para. 13, pp. 9-10.

284. Participating States should engage in peer review with other states in good faith, and should co-operate with international human rights bodies with the aim of strengthening the protection of human rights defenders and creating and consolidating a safe and enabling environment for their work. The Council of Europe Committee of Ministers, for example, has called on its member states to co-operate with the Council of Europe human rights mechanisms, in particular with the ECtHR and with the Commissioner for Human Rights, by facilitating country visits, providing adequate responses and entering into dialogue with the Commissioner about the situation of human rights defenders when so requested.[441] Similarly, participating States should co-operate with and respond favourably to requests by UN Special Procedures, including the Special Rapporteur on the situation of human rights defenders, to visit their countries.[442] They should also fully comply with their obligations to periodically report to monitoring bodies on the implementation of the international human rights instruments that they have ratified, and to provide these bodies with specific information on measures taken to ensure the protection of human rights defenders as required. In particular, states should provide effective and diligent follow-up to the recommendations made by international treaty monitoring bodies and other human rights mechanisms. The UN Human Rights Council has encouraged states to "include in their reports for the universal periodic review and to treaty bodies information on the steps taken to create a safe and enabling environment for human rights defenders". [443]

285. Participating States are encouraged to seek the assistance of ODIHR when reviewing legislation and developing legal amendments, in order to bring their laws fully in line with international human rights standards and OSCE commitments relevant to the protection of human rights defenders. Furthermore, they should provide information to ODIHR about the steps taken to implement the present Guidelines. This is important in order to ensure that ODIHR is able to perform its monitoring role and assist participating States in the implementation of relevant human dimension commitments, including by sharing information and best practices.[444] As the main institution working in the human dimension, ODIHR is tasked with "reporting at regular intervals on its activities and providing information on implementation issues", including to the OSCE Permanent Council, and to "provide supporting material for the annual review of implementation and, where necessary,

441 Council of Europe Committee of Ministers Declaration, para. 2(viii).

442 The UNGA has called on states to "give serious consideration to responding favourably to the requests of the Special Rapporteur to visit their countries, and urges them to enter into a constructive dialogue with the Special Rapporteur with respect to the follow-up to and implementation of her recommendations, so as to enable the Special Rapporteur to fulfil her mandate even more effectively"; see A/RES/66/164, para. 10.

443 See A/HRC/RES/22/6, para. 19.

444 In accordance with the 1992 Helsinki Document, ODIHR's mandate is to assist OSCE participating States to "ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and … to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society."(Helsinki 1992, "Decisions: VI. The Human Dimension", para. 2). Furthermore, ODIHR's role includes serving as a point of contact for information provided by participating States in accordance with their OSCE commitments, as well as disseminating information on the human dimension (Rome 1993, "Decisions: IV. The Human Dimension", para. 4).

clarify or supplement information received".[445] In the context of their commitment to co-operate within the OSCE and with its institutions, OSCE participating States have also expressed the determination to "co-operate in a spirit of solidarity and partnership in a continuing review of implementation".[446]

286. With a view to ensuring full compliance with their human dimension commitments relevant to the protection of human rights defenders, participating States should also welcome and facilitate other ODIHR activities in support of the implementation of their human dimension commitments relevant to human rights defenders, including country visits by ODIHR. For example, in the spirit of the OSCE commitment to "accept as a confidence building measure the presence of observers sent by participating States and representatives of non-governmental organizations and other interested persons at proceedings before courts",[447] when relevant participating States should also facilitate OSCE/ODIHR monitoring of trials of human rights defenders.

OSCE

287. In 2003, OSCE participating States underscored the important role of the OSCE as an "active player across its region, using its institutions – the Office for Democratic Institutions and Human Rights (ODIHR), the High Commissioner on National Minorities (HCNM), and the Representative on Freedom of the Media (RFoM) – its field operations and its Secretariat to the full", and highlighted the role of the institutions as "important instruments in assisting all participating States to implement their commitments, including respect for human rights, democracy and the rule of law."[448] In 2007, the OSCE Parliamentary Assembly reiterated human rights defenders' need for particular attention, support and protection by the OSCE, its institutions and field operations.[449] In order to supplement ongoing OSCE engagement with human rights defenders in terms of the implementation of human dimension commitments, including through their participation at human dimension events, OSCE executive structures, institutions and field presences of the organization should take into account the present Guidelines in accordance with their respective mandates. This will enable them to mainstream the protection of human rights defenders and support the creation and consolidation of an enabling environment for human rights work throughout the OSCE's activities.

445 Budapest 1994, "Decisions: VIII. The Human Dimension", para. 8.

446 Istanbul 1999, "Charter for European Security: III. Our Common Response", para. 14.

447 Copenhagen 1990, para. 12.

448 Maastricht 2003, "OSCE Strategy to Address Threats to Security and Stability in the Twenty- First Century", para. 20.

449 OSCE Parliamentary Assembly, "Resolution on strengthening OSCE engagement with human rights defenders and national human rights institutions", paras. 8 and 23.

ANNEX
Selected reference materials and resources

1. SPECIFIC INSTRUMENTS AND STANDARDS CONCERNING THE PROTECTION OF HUMAN RIGHTS DEFENDERS

- United Nations: Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders), adopted unanimously by UN General Assembly Resolution A/RES/53/144 on 9 December 1998, <http://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>.
- Council of Europe: Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities, adopted on 6 February 2008, <https://wcd.coe.int/ViewDoc.jsp?id=1245887&Site=CM>.

Key resolutions and recommendations concerning the protection of human rights defenders

United Nations:

- General Assembly Resolution on the protection of women human rights defenders, UN Doc. A/RES/68/181, adopted on 18 December 2013, <http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/68/181>.
- General Assembly Resolution on the promotion of the UN Declaration on Human Rights Defenders, UN Doc. A/RES/66/164, adopted on 11 December 2011, <http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/66/164>.
- Human Rights Council Resolution on the protection of human rights defenders, UN Doc. A/HRC/RES/22/6, adopted on 21 March 2013, <http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/RES/22/6>.
- Human Rights Council Resolution on the protection of human rights defenders, UN Doc. A/HRC/RES/13/13, adopted 25 March 2010, <http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/RES/13/13>.

(All previous General Assembly and Human Rights Council Resolutions on the protection of human rights defenders can be accessed through: <http://ap.ohchr.org/documents/dpage_e.aspx?m=70&m=166>).

Council of Europe:

- Parliamentary Assembly of the Council of Europe (PACE) Resolution 1891 (2012) on the situation of human rights defenders in Council of Europe member States, adopted on 27 June 2012, <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=18948&lang=EN>.

- PACE Resolution 1891 (2009) on the situation of human rights defenders in Council of Europe member States, <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=17727&lang=en> and Recommendation 1866 (2009), <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=17728&lang=en>, both adopted on 28 April 2009.

OSCE:

- OSCE Parliamentary Assembly Resolution on strengthening OSCE engagement with human rights defenders and national human rights institutions, para. 17, in "Kyiv Declaration and Resolutions adopted at the sixteenth annual session", Kyiv, 5 to 9 July 2007, pp. 28-30, <http://www.oscepa.org/publications/declarations/2007-kyiv-declaration/250-2007-kyiv-declaration-eng/file>.

European Union Guidelines

- "Ensuring Protection - European Union Guidelines on Human Rights defenders", 2008, <http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesDefenders.pdf>.

National guidelines

- Switzerland: "Swiss Guidelines on the Protection of Human Rights Defenders", Federal Departmental of Foreign Affairs (FDFA), December 2013, <http://www.admin.ch/aktuell/00089/index.html?lang=en&msg-id=51322>.

- Norway: "Norway's efforts to support human rights defenders, Guide for the foreign service", Norwegian Ministry of Foreign Affairs, December 2010, <http://www.regjeringen.no/en/dep/ud/documents/handbooks_brochures/2010/hr_defenders_guide.html?id=633052>.

2. GENERAL HUMAN RIGHTS STANDARDS WITH RELEVANCE TO THE PROTECTION OF HUMAN RIGHTS DEFENDERS

OSCE human dimension commitments

OSCE participating States have adopted a large number of politically binding commitments relating to what has become known as the human dimension of the OSCE's comprehensive security concept. Human dimension commitments with relevance to the work of human rights defenders include commitments on non-governmental organizations, freedom of expression, free media and information, freedom of movement, rule of law and the independence of the judiciary, the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, freedom from arbitrary arrest and detention, the right to a fair trial and the right to effective remedies, among others.

In the Budapest Document of 1994, in the context of the drafting of the UN Declaration on Human Rights Defenders, participating States specifically emphasized the need for protection of human rights defenders (Budapest Document: Towards a Genuine Partnership in a New Era (Summit of Heads of State or Government), 1994, Decisions: VIII. The Human Dimension).

For a thematic and chronological compilation of all OSCE human dimension commitments see: <http://www.osce.org/odihr/76894> and <http://www.osce.org/odihr/elections/76895>.

Universal and regional human rights treaties relevant to the protection of human rights defenders

For the text of the universal and regional human rights treaties that are also relevant to the protection of human rights defenders and the exercise of the right to defend human rights, see the links below.

United Nations:

- Core international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), among others: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>.

- The jurisprudence and concluding observations of the United Nations treaty bodies monitoring implementation of the core international human rights treaties can be searched at: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en>.

(For a non-exhaustive list of universal human rights instruments, by subject matter, including non-treaty standards, see also: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx>).

Council of Europe:

- Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and Protocols to the Convention: <http://www.conventions.coe.int/Treaty/Commun/ListeTraites.asp?MA=3&CM=7&CL=ENG>.

- The jurisprudence of the European Court of Human Rights can be searched at: <http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx>.

Organization of American States:

- American Convention on Human Rights (ACHR), American Declaration of the Rights and Duties of Man and other Inter-American human rights instruments: <http://www.oas.org/en/iachr/mandate/basic_documents.asp>.

3. INTERNATIONAL AND REGIONAL MECHANISMS FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS

United Nations:

- Special Rapporteur on the situation of Human Rights Defenders: <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/SRHRDefendersIndex.aspx>.

(For a list of all thematic Special Procedure mandates of the Human Rights Council, including others of relevance to the work of human rights defenders, see: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Themes.aspx>)

Council of Europe:

- Commissioner for Human Rights, <http://www.coe.int/en/web/commissioner/human-rights-defenders>.

Organization of American States:

- Inter-American Commission Rapporteurship on Human Rights Defenders, <http://www.oas.org/en/iachr/defenders/default.asp>.

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